APPENDIX

In the Supreme Court of the United States

October Term, 1978

No. 78-575
SOUTHERN RAILWAY COMPANY,
Petitioner
v.
SEABOARD ALLIED MILLING CORP., ET AL.
Respondents.

No. 78-597
INTERSTATE COMMERCE COMMISSION,
Petitioner
v.
SEABOARD ALLIED MILLING CORP., ET AL.
Respondents.

No. 78-604
SEABOARD COAST LINE RAILROAD COMPANY, ET AL.,
Petitioners
v.
SEABOARD ALLIED MILLING CORP., ET AL.
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petition for Certiorari filed in No. 78-575 October 6, 1978.
Petitions for Certiorari filed in No. 78-597 and No. 78-604
October 10, 1978
Certiorari Granted January 8, 1979.

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Interstate Commerce Commission (ICC)
Certified List of Relevant Documents
as Filed by the ICC with United States
Court of Appeals for the Eighth Circuit

INTERSTATE COMMERCE COMMISSION
Washington, D.C. 20423

Office of the Secretary

I, H. G. HOMME, JR., Acting Secretary of the Interstate Commerce Commission, do hereby certify that the attached document-index is a true representation and listing of all formal filings and Commission issuances in the proceeding docketed and identified as No. 36663, (DEMAND SENSITIVE RATES ON GRAIN AND SOYBEANS - SOUTHERN FREIGHT ASSOCIATION TERRITORY). Collectively, the documents listed on the attached index represent the entire formal record in said proceedings, the originals of which are on file and of record in the Office of the Secretary of this Commission, and are available for review, upon request.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Commission this 12th day of October, A. D., 1977.

s/s H. G. Homme, Jr.
ACTING SECRETARY OF THE INTERSTATE COMMERCE COMMISSION

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OFFICE OF THE SECRETARY — FILING INDEXING SHEET		PAGE 1 OF 6 PAGES		
CASE ON APPEAL SEABOARD ALLIED MILLING CORP., ARCHER DANIELS MIDLAND COMPANY, ADM MILLING CO., CONAGRA, INC., and DIXIE PORTLAND FLOUR MILLS, INC. V.		INTERSTATE COMMERCE COMMISSION and UNITED STATES OF AMERICA	NO. 77-1729	CIR. 8th
COMMISSION PROCEEDING	DOCKET NO. No. 36663	TITLE — DEMAND SENSITIVE RATES ON GRAIN AND SOYBEANS — SOUTHERN FREIGHT ASSOCIATION TERRITORY		

VOLUME I

NO.	TITLE/SUBSTANCE OF DOCUMENT	DATE OF FILING/SERVICE	NO. OF PAGES	PARTY/COMMISSION
1.	JUSTIFICATION STATEMENT	8/16/77	80	SOUTHERN FREIGHT ASSOCIATION (by B. B. Bowers)
2.	LETTER: Advising of corrections of typographical errors in item next above.	8/16/77	2	SEABOARD COAST LINE RAILROAD COMPANY (by W. Poynter)
3.	PROTEST and PETITION: For suspension.	8/28/77	3	NORTH CAROLINA DEPARTMENT OF AGRICULTURE (by J. A. Graham)
4.	VERIFIED COMPLAINT, PROTEST and PETITION: For suspension.	Dated 8/31/77	19	MFC SERVICES (AAL) (by H. L. Bass)
5.	VERIFIED COMPLAINT, PROTEST and PETITION: For suspension.	8/31/77	5	ILLINOIS DEPARTMENT OF AGRICULTURE (by L. M. Rife)
6.	VERIFIED COMPLAINT, PROTEST and PETITION: For suspension and investigation.	8/31/77	31	THE EARLY AND DANIEL CO., INC. (by J. H. Sisson)
7.	VERIFIED COMPLAINT, PROTEST and PETITION: For suspension and investigation.	9/1/77	12	INDIANA COMMISSIONER OF AGRICULTURE (by R. D. Orr)
8.	VERIFIED COMPLAINT, PROTEST and PETITION: For suspension and investigation.	9/1/77	12	GARVEY, INC. (by J. I. Irlandi)
9.	VERIFIED COMPLAINT, PROTEST and PETITION: For suspension and investigation.	9/1/77	2	CARNATION COMPANY (by A. P. Davis)
10.	VERIFIED COMPLAINT, PROTEST and PETITION: For suspension.	9/2/77	26	INDIANA GRAIN AND FEED ASSOCIATION, INC.; and GRAIN AND FEED ASSOCIATION OF ILLINOIS (by R. L. Cole and H. H. Hoemann)

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CASE ON APPEAL SEABOARD ALLIED MILLING CORP., ET AL	V.	INTERSTATE COMMERCE COMMISSION and UNITED STATES OF AMERICA	NO. 77-1729	CIR. 8th

NO.	TITLE/SUBSTANCE OF DOCUMENT	DATE OF FILING/SERVICE	NO. OF PAGES	PARTY/COMMISSION
11.	PROTEST and PETITION: For suspension and investigation.	9/2/77	2	JOS. SCHLITZ BREWING COMPANY (by J. R. Erwin)
12.	VERIFIED COMPLAINT, PROTEST and PETITION: For suspension.	9/2/77	13	NEW ORLEANS TRAFFIC AND TRANSPORTATION BUREAU, INC. (by G. B. Perry)
13.	PETITION: For investigation and suspension.	9/2/77	12	GENERAL MILLS, INC. (by O. Callson)
14.	VERIFIED COMPLAINT and PETITION: For suspension.	9/5/77	5	PIEDMOND MILLS, INC. (by W. R. Berg)
15.	VERIFIED COMPLAINT and PETITION: For suspension.	9/5/77	5	STATESVILLE FLOUR MILLS, INC. (by J. Diamond)
16.	VERIFIED COMPLAINT and PETITION: For suspension.	9/5/77	6	BARTLETT AND COMPANY (by R. W. Evans)
17.	VERIFIED COMPLAINT, PROTEST and PETITION: For suspension.	9/6/77	9	THE BOARD OF TRADE OF KANSAS CITY, MISSOURI, INC. (by J. C. Hansen)
18.	VERIFIED COMPLAINT and PETITION: For suspension and investigation.	9/6/77	12	VIRGINIA DEPARTMENT OF AGRICULTURE AND COMMERCE (by C. M. Carbaugh)
19.	VERIFIED COMPLAINT, PROTEST and PETITION: For suspension and investigation.	9/6/77	40	ALABAMA POULTRY INDUSTRY ASSOCIATION, ET AL (and 8 other poultry associations) (by M. A. Floyd)
20.	CONFIRMATION: Of telegram in item #9 above.	9/6/77	3	CARNATION COMPANY (by A. P. Davis)

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CASE ON APPEAL
SEABOARD ALLIED MILLING CORP., ET AL V. INTERSTATE COMMERCE COMMISSION and UNITED STATES OF AMERICA NO. 77-1729 CIR. 8th

NO.	TITLE/SUBSTANCE OF DOCUMENT	DATE OF FILING/SERVICE	NO. OF PAGES	PARTY/COMMISSION
21.	VERIFIED COMPLAINT, PROTEST and PETITION: For suspension and investigation.	9/6/77	19	UNITED STATES DEPARTMENT OF AGRICULTURE (by C. M. Pearson)
22.	VERIFIED COMPLAINT, PROTEST and PETITION: For suspension and investigation.	9/6/77	34	BOARD OF TRADE OF THE CITY OF CHICAGO; ST. LOUIS GRAIN CORPORATION; FS SERVICES, INC.; ILLINOIS FARM BUREAU; and ILLINOIS GRAIN CORPORATION (by T. F. McFarland, Jr.)
23.	VERIFIED COMPLAINT, PROTEST and PETITION: For suspension and investigation.	9/6/77	76	ARCHER DANIELS MIDLAND COMPANY; ADM MILLING CO.; CONAGRA, INC.; DIXIE PORTLAND FLOUR MILLS, INC.; and SEABOARD ALLIED MILLING CORP. (by P. A. Greene)
24.	PETITION: For rejection of tariffs.	9/6/77	7	ARCHER DANIELS MIDLAND COMPANY; ADM MILLING CO.; CONAGRA, INC.; DIXIE PORTLAND FLOUR MILLS, INC.; and SEABOARD ALLIED MILLING CORP. (by P. A. Greene)
25.	VERIFIED COMPLAINT, PROTEST and PETITION: For suspension and investigation.	9/7/77	8	NATIONAL COUNCIL OF FARMER COOPERATIVES (by J. S. Krzyminski)
26.	PROTEST	9/8/77	2	FLORIDA DEPARTMENT OF AGRICULTURE (by D. Conner)
27.	PROTEST	9/8/77	1	KENTUCKY DEPARTMENT OF AGRICULTURE (by T. O. Harris)
28.	REPLY: to protests and petitions for suspensions.	9/8/77	39	SOUTHERN FREIGHT ASSOCIATION (by B. B. Bowers)
29.	SUPPLEMENTARY PETITION: For rejection of tariffs.	9/12/77	5	ARCHER DANIELS MIDLAND COMPANY; CONAGRA, INC.; DIXIE PORTLAND FLOUR MILLS, INC.; SEABOARD ALLIED MILLING CORP.; and ADM MILLING CO. (by J. H. Caldwell)

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CASE ON APPEAL
SEABOARD ALLIED MILLING CORP., ET AL V. INTERSTATE COMMERCE COMMISSION and UNITED STATES OF AMERICA NO. 77-1729 CIR. 8th

NO.	TITLE/SUBSTANCE OF DOCUMENT	DATE OF FILING/SERVICE	NO. OF PAGES	PARTY/COMMISSION
30.	TELEGRAM: Protest, request for suspension and investigation and requesting time to file petition for intervention.	9/14/77	1	NORTH CAROLINA DEPARTMENT OF AGRICULTURE (by R. L. Edmisten)
31.	ORDER: That the petition in item #24 above, as supplemented, is *denied*.	9/14/77	1	DIVISION 2, Commissioners Murphy, Gresham and Clapp (Commissioner Clapp did not participate)
32.	ORDER: That the respondent carriers file, with the Secretary of this Commission, reports relating the effect of the schedules in terms of (1) car utilization (filled and unfilled orders by car types); (2) grain movements based on specific commodities and the stations or origin and destination; (3) carloadings by car type and commodity; (4) evidence of diversion; and (5) evidence of shipper rescheduling. Each weekly report shall be filed no later than two weeks after the end of the report week. A week, for the purpose of this proceeding, shall run from Thursday to Wednesday, inclusive. This requirement is subject to later refinement or modification by this Commission. Since several protestants raise allegations concerning an alleged disparate treatment between railroad-owned and privately-owned equipment, we will direct our Bureau of Investigations and Enforcement and Bureau of Operations to closely monitor this matter.	9/14/77	4	BY THE COMMISSION (Vice Chairman Clapp and Commissioner Christian did not participate)

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OFFICE OF THE SECRETARY — FILING INDEXING CONTINUATION SHEET PAGE 5 OF 6 PAGES

CASE ON APPEAL SEABOARD ALLIED MILLING CORP., ET AL	V.	INTERSTATE COMMERCE COMMISSION and UNITED STATES OF AMERICA	NO. 77-1729	CIR. 8th

NO.	TITLE/SUBSTANCE OF DOCUMENT	DATE OF FILING/SERVICE	NO. OF PAGES	PARTY/COMMISSION
33.	REPLY: To supplementary petition in item #29 above.	9/15/77	5	SOUTHERN FREIGHT ASSOCIATION RAILROADS (by C. N. Marshall)
34.	ORDER: That this proceeding is reopened for the purpose of complying with the order of The United States Court of Appeals For the Eighth Circuit; solely in obedience to the Court's order as specified, the operation of the considered schedules is hereby, deferred until further order.	9/15/77	1	ACTING CHAIRMAN CLAPP
35.	PETITION: To intervene.	9/16/77	6	NORTH CAROLINA DEPARTMENT OF AGRICULTURE (by R. L. Griffin)
36.	LETTER: Addressed to R. L. Edmiston, advising that the petition in item next above was received at the Commission too late to be considered. The petition should have reached the Commission not later than 9/6/77. Accordingly, your petition is being passed to the file without further handling.	9/21/77	2	H. G. HOMME, JR., Acting Secretary
37.	ORDER: That respondents may cancel on one day's notice those supplements postponing the effective date of the specified schedules; that, consistent with the court's admonishment, respondents keep account of all amounts received because of these increased rates and charges. The account shall specify by whom (CONT'D.)	9/23/77	2	ACTING CHAIRMAN CLAPP

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OFFICE OF THE SECRETARY — FILING INDEXING CONTINUATION SHEET PAGE 6 OF 6 PAGES

CASE ON APPEAL SEABOARD ALLIED MILLING CORP., ET AL	V.	INTERSTATE COMMERCE COMMISSION and UNITED STATES OF AMERICA	NO. 77-1729	CIR. 8th

NO.	TITLE/SUBSTANCE OF DOCUMENT	DATE OF FILING/SERVICE	NO. OF PAGES	PARTY/COMMISSION
37.	(CONT'D.) and on whose behalf the amounts are paid, shall otherwise meet all requirements of Section 15(8)(e) of the Interstate Commerce Act, and shall be maintained for the period the involved schedules remain in effect.			
38.	NOTICE: A court action was instituted on or about 9/14/77, involving this proceeding before the United States Court of Appeals for the Eighth Circuit.	9/29/77	1	H. G. HOMME, JR., Acting Secretary

END OF VOLUME 1 AND THIS PROCEEDING.

Total pages: 513

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SE-46a (7/75)

Certified General Docket List -
United States Court of Appeals for
the Eighth Circuit (CC8)
(Docket Nos. 77-1729 and 77-1770)

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

APPEAL FROM PETITION FOR REVIEW OF
ORDER OF INTERSTATE COMMERCE COMMISSION

CASE NO. 77-1770
Consolidated w/ 77-1729

TITLE OF CASE

Board of Trade of the City of Chicago,
FS Services, Inc.,
Illinois Farm Bureau,
Illinois Grain Corporation,
and
St. Louis Grain Corporation,

Petitioners,

vs.

Interstate Commerce Commission,
and
United States of America,

Respondents.

Seaboard Coast Line Railroad Company,
Southern Railway Company, Louisville and
Nashville Railroad Company, Illinois
Central Gulf Railroad Company and
St. Louis-San Francisco Railway Company,

Intervenor-Respondents.

ATTORNEYS FOR APPELLANT

Harold E. Spencer
Thomas F. McFarland, Jr.

ATTORNEYS FOR APPELLEE

Robert L. Thompson
Christine N. Kohl (ICC)

Intervenors-Respondents:
Charles N. Marshall
Adrian L. Steel, Jr.
Wandaleen Poynter

DATE	ACCOUNT OF APPELLANT		Received	Disbursed	Remarks
1977					
Sept. 30	Docketing fee	EH&C	50.00		

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

CASE NO. 77-1770

	FILINGS - PROCEEDINGS	FILED
1977		
Sept. 30	Docketed case	
Sept. 30	Petition for Review of Order of Interstate Commerce	(1)
Oct. 5	Appearance petitioners	(2)
Oct. 11	Appearance respondents	(3)
Oct. 12	Mo Seaboard Coast Line Rr. Co., Southern Rr. Company, Louisville and Nashville Rr Co., I.C. Gulf Rr. Co. and St. Louis-San Francisco Rr Co. for lv to intervene & to consolidate w/1729	(4)
Oct. 20	Order: Petitions for review of orders of Interstate Commerce Commission are consolidated for briefing and submission to court; Seaboard Coast Line Railroad Company; Southern Railway Company, Louisville and Nashville Railway Company; Illinois Central Gulf Railroad Company; and St. Louis-San Francisco Railway Company may intervene as parties-respondents w/77-1729	
Oct. 21	Appearance respondents	(5)
Oct. 21	Appearance Intervenors-respondents	(6)
Oct. 21	Appearance Intervenors-respondents	(7)
Nov. 8	*Brief petitioner* w/ser 0+3 (Intervening petitioner in 77-1729)	
Nov. 11	CERTIFIED LIST OF PROCEEDINGS BEFORE ICC	(8)
Dec. 5	Mo respondent for extension of time to file brief, with 77-1729	
Dec. 5	Order: Respondents may have thru December 8 to file briefs w/1729	
Dec. 9	*Brief Respondent* w/ser. 10 copies (USA)	
Dec. 9	*Brief appellee* w/ser. 10 copies (Interstate Commerce Commission)	
Dec. 9	*Brief of Railroad Intervenors* w/ser. 0+4	

Dec. 13	Mo petitioners for extension of time to file reply briefs, with 77-1729	
Dec. 15	Mo Intervening Respondent Railroads for lv to file reply brief, with 77-1729.	
Dec. 15	Order: Petitioners may have thru January 5 to serve and file reply briefs; appendix remains due to be filed by January 6, 1978 w/77-1729	
Dec. 19	Transferred to January session.	
Dec. 20	Motion of railroad intervenors for leave to file a 20½-page supplemental brief	
Dec. 20	Order: Motions of intervenor-respondents, Railroads, for leave to file w/1729 reply brief granted; Railroads may file reply brief not to exceed twenty typewritten pages w/77-1729	
Dec. 23	Objection of petitioners Chicago Board of Trade, et al., to reply brief of intervenor-respondent railroads, with 77-1729.	(9)
Jan. 3	*Appendix* 10 copies w/77-1729 copies to panel	
Jan. 5	*Reply Brief Petitioners* w/ser. 0+3	(10)
Jan. 5	*Supp brief of Railroad Intervenors* w/ser 0+4 w/77-1729	
Jan. 12	*Brief of respondent, I.C.C.* Printed copies w/service w/1729	
Jan. 13	Argued and submitted (with 1729) to Judges Gibson, Van Oosterhout & Matthes and John Caldwell for petitioners in 1729; Harold Spencer for petitioners in 1770; Robert L. Thompson, Dept. of Justice for U.S.; Charles White for ICC; Charles Marshall for Southern Ry; Wandaleen Poynter for Seaboard Coast Line. Rebuttal by Messers. Caldwell and Spencer. Recorded.	
Feb. 16	Opinion by Judge Van Oosterhout. (Printed & Published) w/1729.	

Feb. 16 JUDGMENT: Commission's order terminating its investigation of patent illegal charges is vacated and cases are remanded to Commission for further proceedings in accordance with opinion. w/1729.

Mar. 1 Mo ICC for ext of time to file pet for reh and sugg for reh en banc, with 1729.

Mar. 1 Appearance for respondent ICC. (11)

Mar. 7 Order: ICC granted to 4-3-78 to file petition for Rehearing and Rehearing En Banc (with 1729)

Apr. 3 Petition of respondent ICC for rehearing en banc and rehearing w/ service. w/ 1729

Apr. 18 Mo petitioners for addtnl 10 days to respond to pet for reh and reh en banc. w/1729.

April 20 ORDER: On motion of certain petitioners all parties desiring to respond to Commission's petition for rehearing, etc., are to have response in the office of the Clerk of Court in St. Louis, Missouri no later than 4/28/78 (w/77-1729)

Apr. 26 Response of respondent, United States of America, to Commission's petition for rehearing en banc w/ service. w/ 1729.

Apr. 28 Response of petitioners (in 77-1770) Board of Trade of the City of Chicago; FS Services, Inc., Illinois Farm Bureau, Illinois Grain Corporation and St. Louis Grain Corp. to Commission's petition for rehearing en banc. w/ service. (77-1729) (12)

April 28 Response of petitioners/intervenors respondents, Seaboard Allied Milling Corp., et al. and intervenors Southeastern Poultry and Egg Association, State of North Carolina and State of Indiana w/ service. w/1729

May 2 Mo of Intervening Railroad Respondents for lv to file memorandum in support of ICC's pet for reh with suggestions for reh en banc, with 1729.

May 9 Opposition of petitioners to granting lv to RR invenors to file memo in support of ICC's pet for reh. (13)

May 12 ORDER: Petition for rehearing en banc and rehearing filed by respondent, ICC, is denied, w/77-1729.

May 22 Certified copies of judgment forwarded to counsel (with 1729)

Aug. 10 Letter from Clerk of Supreme Court stating Mr. Justice Blackmun signed order in Case No. A-115 granting extension of time to 9/9/78 to file petition for writ of certiorari, with 77-1729.

Aug. 11 Letter from Clerk of Supreme Court stating Mr. Justice Blackmun signed order in Case No. A-106 granting extension of time to 9/9/78 to file petition for writ of certiorari, with 77-1729.

Aug. 24 Letter from Clerk of Supreme Court stating Mr. Justice Blackmun signed order in Case No. A-165 granting extension of time to 9/9/78 to file petition for writ of certiorari, with 77-1729.

Sept. 8 Letter from Clerk of Supreme Court stating Mr. Justice Blackmun signed order in Case No. A-115 granting extension of time to 10/9/78 to file petition for writ of certiorari, with 77-1729.

Sept. 8 Letter from Clerk of Supreme Court stating Mr. Justice Blackmun signed order in Case No. A-106 granting extension of time to 10/9/78 to file petition for writ of certiorari, with 77-1729.

Sept. 8 Letter from Clerk of Supreme Court stating Mr. Justice Blackmun signed order in Case No. A-165 granting extension of time to 10/9/78 to file petition for writ of certiorari, with 77-1729.

Oct. 13 Notice of filing petition for writ of certiorari in Supreme Court of U. S. as Case #78-575 (as of 10/6/78), with 77-1729.

Oct. 16 Notice of filing petition for writ of certiorari in Supreme Court of U.S. as Case # 78-597 (as of 10/10/78) with 77-1729.

Oct. 31 Notice of filing petition for writ of certiorari in Supreme Court of U.S. as Case #78-604 (as of 10/10/78), with 77-1729.

A true copy.

Attest: /s/ Robert C. Tucker
Per A.K.

Clerk, U. S. Court of Appeals, 8th Circuit.

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

APPEAL FROM
PETITION FOR REVIEW OF ORDER OF ICC

CASE NO. 77-1729

consolidated w/ 77-1770

TITLE OF CASE

Seaboard Allied Milling Corp., Archer Daniels Midland Company, ADM Milling Co., Conagra, Inc., and Dixie Portland Flour Mills, Inc.,

Petitioners,

vs.

Interstate Commerce Commission and United States of America,

Respondents.

Seaboard Coast Line Railroad Company, Southern Railway Company, Louisville and Nashville Railroad Company, Illinois Central Gulf Railroad Company and St. Louis-San Francisco Railway Company,

Intervenor-Respondents.

ATTORNEYS FOR APPELLANT

Peter A. Greene
John H. Caldwell
Neal A. Jackson
Arthur J. Cerra
(Harold E. Spencer (Intervenors
(Thomas McFarland StL Grain, etc.
(W. Thomas McGhee)
David C, Todd (Intervenor Miss. Poultry Assn)
William G. Mundy
Michael A. Yuhas

ATTORNEYS FOR APPELLEE

Robert Lewis Thompson
Charles N. Marshall (Intervenor Southern Railway)
Wandaleen Poynter (Intervenor R.R.)
Adrian Steel, Jr. (Intervenor R.R.)
Christine N. Kohl (ICC)

No. below: 36663; 67123
Judge below:
Date of Judgement: Sept. 14, 1977
Notice of appeal filed:

DATE	ACCOUNT OF APPELLANT		Received	Disbursed	REMARKS
9/14/77	Docket fee	Jackson	50.00		

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

CASE NO. 77-1729 w/ 77-1770

DATE	FILINGS—PROCEEDINGS	FILED
1977		
Sept. 14	Petition for Review of Order of ICC	(1)
Sept. 14	Motion for Stay	(2)
Sept. 14	Memorandum in Support of Motion for Stay	(3)
Sept. 14	Affidavit of Donald J. Stone.	(4)
Sept. 14	Affidavit of John R. Staley	(5)
Sept. 14	Affidavit of James R. Woolery	(6)
Sept. 14	Appearance for petitioners	(7)
Sept. 14	Appearance for petitioners	(8)
Sept. 14	Certificate of Service of Petition and Motions	(9)
Sept. 14	Order: Order of ICC of September 14, 1977, is stayed and respondents are enjoined from permitting the subject rate tariffs from becoming effective until further order of the court; respondents may have thru September 21 to respond to petitioners' motion for stay	(10)
Sept. 15	Mo of ICC for a hearing to lift order of 9/14 to be held on P.M. of 9/16/77, or as soon as possible thereafter. U.S. concurs.	(11)
Sept. 16	Reply of petitioners to request of respondents for hearing.	(12)
Sept. 16	Order of ICC concerning rate tariff schedules.	(13)
Sept. 16	Affidavit of John E. Harvey.	(14)
Sept. 16	Mo Seaboard Coast Line Railroad Company, Southern Railroad Company, Louisville and Nashville Railroad Co., Illinois Central Gulf Railroad	

Co. and St. Louis-San Francisco Railway Co. for lv to intervene (15)

Sept. 16 Order: Hearing in this case set at 1:30 p.m. Thursday, September 22, 1977; counsel will be heard on all matter pertaining to the issuance or continuance of interlocutory injunctive relief in this cause; any briefs or responsive memorandums are to be filed with the clerk by 9/21/77 (16)

Sept. 19 Affidavit of John E. Harvey. (Verified) (17)

Sept. 19 Petition of St. Louis Grain Corporation, Board of Trade of the City of Chicago, FS Services, Inc., Illinois Farm Bureau and Illinois Grain Corporation for leave to intervene. (18)

Sept. 20 Mo Alabama Poultry Industry Association, et al for lv to intervene. (19)

Sept. 20 Mo Mississippi Poultry Association, et al., for lv to intervene. (20)

Sept. 20 Memo in further support of motion for stay. (21)

Sept. 20 Verified Statement of Allan Rahn (Exhibit I) (22)

Sept. 20 Affidavit of William Roenigk. (Exhibit II) (23)

Sept. 21 Response of ICC in opposition to continuance of stay entered without jurisdiction. (24)

Sept. 21 Mo State of Indiana and Robert D. Orr, Lt. Gov. and Commissioner of Agriculture of the State of Indiana by Theodore L. Sendak, Atty.Gen. of Indiana and William G. Mundy, Deputy Atty General for lv to intervene. (25)

Sept. 21 Mo Rufus L. Edmisten, Atty.Gen.of North Carolina for lv to intervene. (26)

Sept. 21 Aff. of James A. Graham, Commnr. of Insurance for N. Carolina. (27)

Sept. 21 Supplemental memo in support of issuance and continuance of interlocutory injunctive relief.. (28)

1977

Sept. 21 *Received* Intervening respondents' (Seaboard Coast Line Rr. Co., Southern Rr. Co., Louisville and Nashville Rr Co., Ill. Central Gulf Rr Co. and St. Louis-San Francisco RR Co.) reply in opposition to mo for stay, pending review.

Sept. 21 I.C.C. Ex Parte No. 324 - Decided 1/28/77. (29)

Sept. 22 Appearance for respondents (30)

Sept. 22 Appearance for petitioner (31)

Sept. 22 Appearance for Intervenor St. Louis Grain, et al (32)

Sept. 22 Appearance for Intervenor Southern Ry (33)

Sept. 22 Appearance for Intervenor Railroads (34)

Sept. 22 Argued and submitted to Judges Matthes, Webster, Henley on motion to set aside Court's stay order, injunction, of 9-14-77; Charles H. White, Jr. for I.C.C. & United States; Charles Marshall for Intervenor(respondent) Southern R.R.: Wandaleen Poynter for Intervenor (respondent) Railroads. John Caldwell for Petitioners; Harold Spencer for Intervenor (petitioner) St. Louis Grain, et al. Concluded by Mr. White. Recorded.

Sept. 22 Appearance for Intervenor (petitioner) St. Louis Grain et al (35)

Sept. 22 Appearance for Intervenor (petitioner) St. Louis Grain et al (36)

Sept. 22 Appearance for petitioner (37)

Sept. 22 Appearance for Intervenor (Respondent) Railroads (38)

Sept. 22 Appearance for Intervenor (Petitioner) Mississippi Poultry (39)

Sept. 22 Rec'd Motion to Continue Stay by Intervenors St. Louis Grain Corp et al

Sept. 22 Rec'd Memorandum in Support of Motion to Continue Stay

Sept. 22 Rec'd Joinder in Motion for Stay from Atty General of Indiana

Sept. 22 Order: Temporary stay heretofore granted should be dissolved, etc., all pending motions to intervene are granted (40)
Sept. 23 Appearance respondent (41)
Sept. 27 Appearance petitioner (42)
Oct. 4 *BRIEFING SCHEDULE:* Appellants' briefs due 11/7/77, appellees' briefs due 12/5/77, appellants' reply briefs due 12/19/77
Oct. 12 Mo Seaboard Coast Line RR Co., et al., for lv to intervene & to consolidate w/77-1770; filed in 77-1770
Oct. 13 CERTIFIED LIST OF PROCEEDINGS BEFORE ICC. (43)
Oct. 19 Mo for lv to proceed under Rule 30(c). (44)
Oct. 19 Order: Counsel may file deferred appendix pursuant to rule 30(c) FRAP (45)
Oct. 20 Order: Petitions for review of orders of Interstate Commerce Commission are consolidated for briefing and submission to court; Seaboard Coast Line Railroad Co.; Southern Railway Company; Louisville & Nashville Railroad Company; Illinois Central Gulf Railroad Company; and St. Louis San Francisco Railway Company may intervene as parties-respondents (46)
Nov. 7 Notice of Alabama Poultry Industry Asscn., et al., that these intervenors will not file a separate brief. Adopt brief of petitioners, w/77-1770. (47)
Nov. 8 *Intervening brief petitioner* w/ser. (Brief petitioner in 77-1770) (48)
Nov. 9 *Brief petitioners* w/ser. (Intervenors Southeastern Poultry & Egg Association and State of North Carolina (49)
Nov. 9 *Brief of Intervening petitioner,* State of Indiana Robert D. Orr, Lieutenant Governor & Commissioner

Of Agriculture Of the State Of Indiana w/ser. 27 copies (50)
Dec. 5 Mo respondent for ext of time to file brief, with 77-1770 (51)
Dec. 5 Order: Respondents may have thru December 8 to file briefs (52)
Dec. 9 *Brief appellee* w/ser. 10 copies (USA) (53)
Dec. 9 *Brief appellee* w/ser (Interstate commerce commission) (54)
Dec. 9 *Brief of Railroad Intervenors* w/ser. 0+4 (55)
Dec. 13 Mo petitioners for extension of time to file reply briefs, with 77-1770 (56)
Dec. 15 Mo Intervening Respondent Railroads for lv to file reply brief, with 77-1770. (57)
Dec. 15 Order: Petitioners may have thru January 5 to serve and file reply briefs; appendix remains due to be filed by January 6, 1978 (58)
Dec. 19 Transferred to January session, w/1770
Dec. 20 Motion of railroad intervenors for leave to file a 20-page supplemental
Dec. 20 Order: Motions of intervenor-respondents, Railroads, for leave to file reply brief granted; Railroads may file reply brief not to exceed twenty typewritten pages (60)
Dec. 23 Objection of petitioners Chicago Board of Trade, et al., to reply brief of intervenor-respondent railroads, with 77-1770.

1978
Jan. 3 *Appendix* 10 copies w/77-1770 copies to panel. Extra copies in Ex. Rm. (61)
Nov 9/77 *Brief Petitioners* (printed copies) 10 copies (62)
Jan. 5 *Reply Brief* (Southeastern Poultry & Egg Association & State of N.C.) (63)
Jan. 5 *Reply brief* (Intervening Petitioner Robert Orr) w/ser 0+26 (64)

Jan. 5 *Supp. brief of Railroad Intervenors* w/ser 0 + 4 w/77-1770 (65)

Jan. 9 Cert. of ser. for Reply brief of Southeastern Poultry (66)

Jan. 11 Recieved 25 copies of Exhibit A of Reply brief of Intervening Petitioner Robert D. Orr. Copies to panel.

Jan. 12 *Brief of respondent, I.C.C.* Printed copies w/service w/1770 (67)

Jan. 13 Argued and submitted to Judges Gibson, Van Oosterhout & Matthes. John Caldwell for petitioners in 1729; Harold Spencer for petitioners in 1770; Robert Thompson, Dept. of Justice for U.S.; Charles White for ICC; Charles Marshall for Southern Ry; Wandaleen Poynter for Seaboard RR. Rebuttal by Messrs. Caldwell and Spencer. (with 1770) Recorded.

Feb. 16 Opinion by Judge Van Oosterhout. (Printed & Published) w/1770. (68)

Feb. 16 JUDGMENT: Commission's order terminating its investigation of patent illegal charges is vacated & cases are remanded to Commission for further proceedings in accordance with opinion. w/ 1770. (69)

Mar. 1 Mo ICC for ext of time to file pet for reh and sugg. reh en banc, with 77-1770. (70)

Mar. 1 Appearance for respondent ICC. (71)

Mar. 7 Order: ICC granted to 4-3-78 to file petition for Rehearing and Rehearing En Banc (with 1770) (72)

Apr. 3 Petition of Respondent ICC for rehearing en banc and rehearing w/service. w/1770. (73)

Apr. 18 Mo petitioners for addtnl 10 days in which to file response to pet for reh. and reh. en banc. w/1770. (74)

Apr. 20 ORDER: On motion of certain petitioners all parties desiring to respond to Commission's petition for rehearing, etc., are to have response in the office of the Clerk of Court in St. Louis, Missouri, no later than 4/28/78. (w/77-1770.) (75)

Apr. 26 Response of respondent, United States of America, to Commission's petition for rehearing en banc w/ service. w/ 1770. (76)

Apr. 28 Response of petitioners (in 77-1770 only) Board of Trade of the City of Chicago, FS Services, Inc., Illinois Farm Bureau, Illinois Grain Corp. and St. Louis Grain Corp. to Commission's petition for rehearing en banc w/ service (1770)

Apr. 28 Response of petitioners/intervenor respondents, Seaboard Allied Milling Corp., et al. and intervenors Southeastern Poultry and Egg Association, State of North Carolina and State of Indiana w/ service. w/ 1770 (77)

May 2 Mo of Intervening Railroad Respondents for lv to file memorandum in support of ICC's pet for reh with suggestion for reh en banc, with 1770. (78)

May 9 Opposition of petitioners to granting lv to RR intervenors to file memo in support of ICC's in support of ICC's pet for reh, etc. (79)

May 12 ORDER: Petition for rehearing en banc and rehearing filed by respondent, ICC, is denied, w/77-1770. (80)

May 22 Certified copies of judgment forwarded to counsel. (with 1770)

Aug. 10 Letter from Clerk of Supreme Court stating Mr. Justice Blackmun signed order in Case No. A-115 granting extension of time to 9/9/78 to file petition for writ of certiorari, with 77-1770. (81)

Aug. 11 Letter from Clerk of Supreme Court stating Mr.

	Justice Blackmun signed order in Case No. A-106 granting extension of time to 9/9/78 to file petition for writ of certiorari, with 77-1770. (82)
Aug. 24	Letter from Clerk of Supreme Court stating Mr. Justice Blackmun signed order in Case No. A-165 granting extension of time to 9/9/78 to file petition for writ of certiorari, with 77-1770. (83)
Sept. 8	Letter from Clerk of Supreme Court stating Mr. Justice Blackmun signed order in Case No. A-115 granting extension of time to 10/9/78 to file petition for writ of certiorari, with 77-1770. (84)
Sept. 8	Letter from Clerk of Supreme Court stating Mr. Justice Blackmun signed order in Case No. A-106 granting extension of time to 10/9/78 to file petition for writ of certiorari, with 77-1770. (85)
Sept. 8	Letter from Clerk of Supreme Court stating Mr. Justice Blackmun signed order in Case No. A-165 granting extension of time to 10/9/78 to file petition for writ of certiorari, with 77-1770. (86)
Oct. 13	Notice of filing petition for writ of certiorari in Supreme Court of U. S. as Case #78-575 (as of 10/6/78), with 77-1770. (87)
Oct. 16	Notice of filing petition for writ of certiorari to Supreme Court of U.S. as Case #78-597 (as of 10/10/78), with 77-1770. (88)
Oct. 31	Notice of filing petition for writ of certiorari to Supreme Court of U. S. as Case #78-604 (as of 10/10/78), with 77-1770. (89)

A true copy.

Attest: /s/ Robert C. Tucker

Clerk, U. S. Court of Appeals, 8th Circuit.
Per A. K.

ICC - 1

Southern Freight Association's Justification Statement.*

Aug. 15, '77

* Corrections stated in ICC-2 have been made in this copy.

BEFORE THE
INTERSTATE COMMERCE COMMISSION

JUSTIFICATION STATEMENT PURSUANT TO
49 C.F.R. §1109.10(f)
ON THE PUBLICATION OF TARIFF
SUPPLEMENTS CONTAINING DEMAND-
SENSITIVE RATES WITHIN THE
MEANING OF 49 C.F.R. §1109.10(b)

Effective Date:	September 15, 1977 through December 15, 1977
Tariff Reference:	Supplement Nos. 201, 137 and 23 to SFTB Tariff Nos. 988-A, I.C.C. S-909, 908-B, I.C.C. S-999 and 972-F, I.C.C. S-1359, Respectively, Joint and Local All-Rail Rates, Also Distance rates on Grain, Carloads
Subject:	Demand-Sensitive Rates on Whole Grain & Soybeans
Within:	Southern Freight Association Territory, including Certain Official Territory Points in Indiana and Illinois

Submitted by:

BATES B. BOWERS, CHAIRMAN
Southern Freight Association
151 Ellis Street, N.E.

Of Counsel:
CHARLES N. MARSHALL
WANDALEEN POYNTER

BEFORE THE

INTERSTATE COMMERCE COMMISSION

JUSTIFICATION STATEMENT PURSUANT TO 49 C.F.R. §1109.10(f) ON THE PUBLICATION OF TARIFF SUPPLEMENTS CONTAINING DEMAND-SENSITIVE RATES WITHIN THE MEANING OF 49 C.F.R. §1109.10(b)

May it please the Commission:

Come now the railroads operating within Southern Freight Association ("SFA") Territory ("Railroads"), and, pursuant to the Commission's regulations, codified after hearing in Ex Parte 324 - *Standards and Expeditious Procedures for Establishing Carload Rates Based on Seasonal, Regional or Peak-Period Demand for Services* ("Ex Parte 324"), at 49 C. F. R. §1109.10, file this statement to justify to the Commission the application of a 20 percent increase on grain movements effective from September 15 through December 15, 1977. The filing of Supplement Nos. 201, 137 and 23 to SFTB Tariff Nos. 988-A, ICC S-909, 908-B, ICC S-999 and 972-F, ICCS-1359, respectively, are made pursuant to the authority of Section 15(17) of the Interstate Commerce Act.

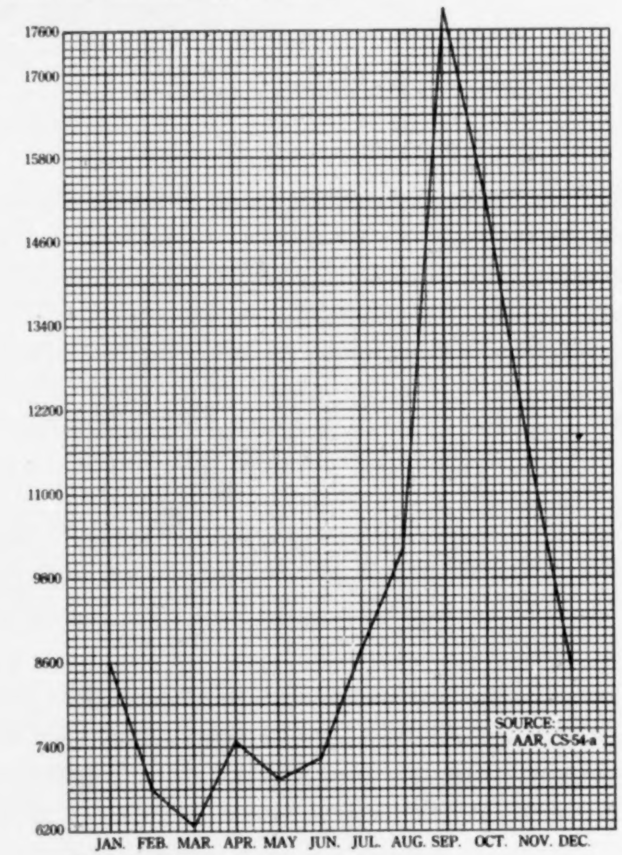
I.

THERE IS A PEAK-PERIOD DEMAND OR SEASONALITY TO THE MOVEMENT OF GRAIN.

Exhibit I, which contains several separate graphic illustrations of the yearly movement of grain, standing alone, proves that grain is a commodity on which a demand-sensitive rate should apply in response to the mandate of Con-

gress set in motion through Section 202(d) of the Railroad Revitalization and Regulatory Reform Act of 1976 ("4R"). A fact verbalized by Chairman O'Neal as recently as July 29, 1977, in a speech in which he gave credence to elasticity studies which indicate that a 35 per cent seasonal rate increase on grain could be effective in "spreading out" shipments, (See Exhibit VI).

As a matter of further emphasis, a graphic illustration of 1976 grain carloadings within the Southern Territory,* including origin points in Indiana and Illinois, is reduced and reproduced immediately below.



* This graph plots carloading statistics for Seaboard Coastline Railroad Company, Southern Railway System and Louisville and Nashville Railroad Company.

As the Verified Statement of Mr. A. C. Jones, Jr., Exhibit IX, outlines, there is a need both from an operational viewpoint and a cost viewpoint to influence the spreading out of grain carloadings, which equate to movements, over a longer span of time than the three-month critical peak period which is repeated annually on all lines moving grain within the Southern Territory. The concurring Verified Statement of R. A. Wharton, Exhibit X, points out also the opposite adverse effect, the idling of expensive equipment in off-peak seasons. It is therefore obvious that the Southern Territory carriers moving most of the grain which is covered by the tariff supplements to which this justification statement is addressed have suffered and continue to suffer increased costs and operational inefficiencies because of the peak-period movement.

It would be inconsistent with good business practice for the railroads to purchase equipment or expand facilities to meet peak-period demands. This principle is especially true when the shippers and receivers of the involved commodities have not made a sufficient attempt to share the burden of a glutted market. As the Commission noted in its Report and Order in *Grain By Rent-A-Train, IFA Territory To Gulf Ports,* 339 I.C.C. 579 (1971) at page 582:

> "Rail carriers have traditionally had to contend with the problem of grain moving during the relatively short harvest season in such tremendous volume as to overtax the car supply."

The Order went on to express the opinion that an incentive to shippers to spread their traffic over a substantially extended period of time and to construct new distribution centers was a desirable consequence of proposed unit-train rates.

It is obvious that the basic problems of the grain hauling railroads and the clear solutions to those problems have long been recognized and appreciated by the Commission. It is hoped that the new spirit of cooperation which the Commission has strongly urged in Ex Parte 324 will prevail and that the result of these experimental seasonal rates and the ones to follow will redound to the credit of the grain interests as well as to the railroads and the general public interest.

II.

THE INCREASES WHICH ARE PROPOSED WILL PROVIDE SUFFICIENT INCENTIVE TO SHIPPERS TO REDUCE PEAK-PERIOD SHIPMENTS, THROUGH RESCHEDULING AND ADVANCE PLANNING.

The Railroads will readily admit, primarily because of inexperience in the formulation of incentive rates of this nature, that there is a possibility that the 20 per cent increase which will be applied will not net the results which they have been published to accomplished. However, serious consideration, as shown by the Verified Statement of R. E. Thompson, Exhibit II, which included benefit of shipper input, was made before the increases were filed. The Commission has recognized and indeed encouraged experimentation with demand-sensitive rates. While the rates can be classified as experimental, since similar rates have not been applied on grain in the Southern Territory, there is a confident feeling among the chief traffic officers charged with the duty of formulating rates that these rates are appropriate and will accomplish the purpose for which they have been designed. It is apparent that the only way to make a final determination is to experience the effects of the rates. To quote from the Exhibit VI general comments of Chairman O'Neal on the 4R Act:

> ". . . To some degree the effects of this law are not yet clear, and in most instances legislative changes do not appear desirable until more experience has been gained. The full impact of some of the Commission's regulation's has yet to be felt . . . ."

In anticipation of protests which will be made by interested shipper groups, it is pointed out that the increase will not be unfair to the shippers who now ship on a year-round basis. First, because it results in only a five per cent increase when projected to a yearly basis and secondly because a shipper can refrain from shipping during the demand period and suffer no increase at all. Further, a five per cent increase is below the seven per cent increase that the Southern Territory railroads could publish under the provisions of Section 15(8)(c) of the Interstate Commerce Act.*

Critical to a justification of a seasonal rate is the conclusion that an incentive is required and that there will be a desired result. Obviously, the initial result which is desired is the leveling of the peak movements over additional months so that net revenue will increase commensurate with the increase in efficient handling of equipment and use of physical plant. Also, there should be incentive provided to shippers and receivers of grain to provide adequate storage facilities to shift to them some of the burden that is created by the sudden influx of grain during a short period of time. At the present time, as Exhibit V indicates, the states within SFA Territory have less storage capacity than any other grain producing or consuming areas. It is evident, as a matter of fact, that the Southeastern consumers, primarily poultry, egg and dairy producers, have made little effort to increase storage capacity sufficiently to enable them to receive shipments on a less than frantic demand basis. Also, the

* See Exhibit II - Verified Statement of R. E. Thompson.

Official Territory origin areas in Indiana and Illinois have also been reluctant to expand their storage capacity in an amount directly proportional to their increased production. In short, the railroads have been placed in a position of accepting almost the total burden of seasonal production and movement. The 4R Act intended to allow railroads to alleviate this situation by formulating a rate structure that would create, in essence, an artificial movement schedule.

It is of course, as briefly touched upon above, impossible to calculate this type of increase with certainty, a fact recognized by the Commission in their findings in Ex Parte 324, as indicated by the willingness of the Commission to allow "experimental" rates which will be subject to cancellation on 30-days notice with no possibility for a period of three years after the date of initial publication of suspension of the cancellation supplement. In the opinion of the rail carriers party to these SFA proposals, the seasonal rates are not so excessive as to result in severe economic harm to shippers not in a position to respond to the incentive as intended.*

To anticipate another position that may be taken by some protestants, as indicated by representations in the proceedings in Ex Parte 324 and shipper hearings at the SFA it was not feasible to lower non-peak season rates in the Southern Territory. It is a well-recognized fact, specifically recognized by the Commission, that the rates in Southern Territory are "depressed."** It is a matter of rate history now that the initiation of the innovative Big John rates in the early 1960's actually allowed all Southern railroads to eventually break

* The 35 per cent seasonal rate increase which Chairman O'Neal suggests as appropriate is substantially above the increases that are now on file.

***Feed Grain To New England*, I.C.C. Docket No. 35786

into the movement of grain. In spite of material reductions in the coarse grain scale in 1957 and 1959 in the South and publication of even lower specific commodity rates from Chattanooga to destinations in Georgia, the Carolinas and Florida, grain continued to move in very large quantities into and throughout the South by both barge and truck. The system of single-car rates subject to transit privileges was simply not effective in increasing the movement of grain by rail. Despite marked growth in grain shipments into the South, rail grain traffic remained relatively static, evincing that, in the late 1959's the railroads were participating in a declining share of a larger market as shippers of grain and grain products turned more and more to other modes.

In endeavoring to meet this situation, the Southern Railway sought to improve its equipment and increase its operating efficiency through the development of extra-large aluminum covered hopper cars, popularly termed Big John cars, capable of handling a revenue load in excess of 100 tons and representing a major breakthrough in the control of costs and a notable advance in the art of railroading.

In connection with these new cars, the Southern, in 1961, proposed to establish substantially reduced all-rail rates, minimum 90 tons per car, 450 tons per shipment, on grain, but not products of grain, in multiple-car lots from certain Ohio and Mississippi River crossings to specified points in Southern Territory. As the capacity of the newly acquired, extra large aluminum covered hopper cars exceeded the proposed 90-ton minimum, the intended rate for the 450-ton shipment would require only five cars. After thorough inquiry and very careful examination, the Commission found, as the Southern contended, that the overwhelming and dominant movement of grain into the South was by truck, and that unregulated truck transportation of grain,

which had increasingly depleted the Southern's prospective grain revenues, was the most substantial and rapidly growing competition facing the rail and easily comprised the dominant competitive force. Upon consideration of the magnitude and effect of this unregulated movement, it was concluded that the Southern's rates were proposed to meet truck competition, and were necessary if the Southern was to participate effectively in the movement of grain. The Commission thus found the Southern free of any predatory intent to close the rivers to barge transportation of grain, and concluded that the new rates fell short of a destructive competitive practice violative of the National Transportation Policy. It further found that the rates contemplated by other rail carriers, to apply in relation to conventional equipment, subject to 50 tons per year, minimum 450 tons per shipment, would not be compensatory, and ordered them canceled.*

While some economists express the opinion that freight rates do indeed affect pricing of grain, there is very little proof that this statement is true and can be substantiated. However, freight rates do effect the growth of markets and the Big John rates, and their progeny, have influenced greatly the growth of the poultry, egg and dairy industry in the Southeast.

Exhibit IV, which shows the USDA production figures from 1953 through 1974 clearly indicates that the expansion of production of one of those grain-dependent industries in the Southeast has been phenomenal.

In the same manner, a seasonal adjustment in freight rates in the sense contemplated by the framers of the 4R

* *Grain in Multiple - Car Shipments - River Crossings to the South,* 318 I.C.C. 641 (1963), 321 I.C.C. 582 (1963) and 325 I.C.C. 752 (1965).

Act can influence the manner in which industrial consumers conduct their business. The preplanning and scheduling which is specified in the Commission's regulations on seasonal and peak-period rates can be accomplished through the seasonal increases to become effective September 15.

This Commission has recognized that the implementation of the Big John rates, or modified Big John rates, and the purchase of equipment over the last 15 years by Southern Territory carriers has created a needed market in the Southeast for the product. The movement of grain into the South has been considered a favorable objective by the Commission as illustrated by the attitude which surfaced in the order dealing with the merger of the MONON Railroad into the L&N.* The Commission observed:

> "New traffic in grain shipments will be developed also as a result of the proposed merger. L&N is a substantial transporter of grain and grain products with 109,509 carloads and 5,904,235 tons of such traffic handled in 1967 yielding revenue of $15,141,541. L&N has substantially increased its grain traffic to the South in recent years due to the establishment by L&N and connecting carriers of reduced incentive loading rates and the development of the "Big Blue" 100-ton covered hopper cars of which L&N presently has in operation a total of 642 cars.
>
> The Monon has been unable to attract much grain traffic to its lines. In 1967, it only carried 6.9 percent of the grain produced in the counties of Indiana served by it. With one factor incentive loading rates on grain in effect to southern districts after merger, substantial reductions would be made in the present combination rates applicable on grain from and to points in the Southeast, with a resultant generation of new traffic over the Monon route."

* *Louisville & N.R.Co. - Merger-Monon Railroad,* 338 I.C.C. 134 at 213 (1970)

The Southeastern market is no longer the infant it was in the "60's". During the last 15 years the Southeastern market has grown, become innovative and established and should now be in a position to accept the responsibility of expanding their storage capacity, not unlike their sister grain deficit areas.

III.

THE DEMAND-SENSITIVE RATES WILL GENERATE ADDITIONAL REVENUE FOR THE SOUTHERN TERRITORY RAILROADS

It is indeed important that the proposed rates do generate additional revenue. However, the additional revenue will not necessarily accrue because of the three month 20 per cent increase, but from the cost saving which will occur because of the resultant increased efficiency in operations and better utilization of equipment. Of course, it cannot be denied that some additional revenue will be enjoyed by Railroads as a direct result of the 20 per cent increase, but this should not be considered the only objective of the rates. As the statement of Francis M. Spuhler, Exhibit III, states, the Railroads do not consider the demand-sensitive rates as cost-based rates. They are purely and simply a matter of incentive, the shipper who wishes to pay for the privilege of shipping during a period of time which has been recognized and factually defined as a high-peak movement period, should be expected to pay for that privilege.

Also in answer to an anticipated basis of protest, it should be understood that not all of the "benefit" will run to the Railroads as a result of these demand-sensitive rates. Some benefit will run to low volume shippers who are now unable to acquire a sufficient supply of cars during the peak season and have no reasonable access to storage facilities or the

ability to construct their own storage. Shippers who have been in a position to store grain yet have chosen to ship at peak periods will now have an incentive to ship earlier or later in the year, thereby releasing cars into the pool for use by other shippers.

IV.

THE RATE INCREASES WILL PROVIDE AN INCENTIVE WHICH WILL RESULT IN THE IMPROVEMENT IN THE OVERALL PATTERN OF GRAIN MOVEMENT

The improvement in the annual utilization of car supply will be two-pronged. Not only will there be an improvement in the overall utilization of the grain car fleet in the Southern Territory, but generally in the utilization of power and all other cars. As the statements of Mr. A. C. Jones, Jr. and Mr. R. A. Wharton (Exhibits IX and X) indicate, the cost of handling equipment generally escalates during the peak movement season. Not only does movement become a problem, but the car supply generally is affected. In response, normally to the Commission's emergency car service orders (See Exhibit VIII), cars other than high capacity covered hoppers are routed into grain service. This deprives shippers who normally have access to these nondedicated cars of their supply. It also reduces the net revenue, because of increased costs, and results in a lowering of the variable cost ratio. It is interesting to note that the Commission has determined that application of Big John Formula Rates can only be compensatory when restricted to the jumbo hopper cars.* With this basic finding in mind, examination of Exhibit XI alone should satisfy the most skeptical individual that there is a revenue loss to at

* *Grain in Multiple-Car Shipments - River Crossings to South*, 325 I.C.C. 752 at 769 (1965).

least one Southern Territory railroad during the peak grain season.

Generally, the proposed rates should indeed improve the level of employment by railroads. Stability in employment is a critical and primary factor to the labor market. At present, demand periods require excessive overtime for existing employees but do not permit, under sound managerial discretion, the employment and training of additional personnel. A more efficient use of facilities would guarantee, as intended by many provisions in the 4R Act, increased movement and stabilization of movement of commodities. It is therefore probable that stabilization would increase the total carloads carried and result in additional employment and training of personnel.

The primary factor in looking at the stability or instability of the grain producers and consumers, the market served by Railroads, is a determination of whether or not their dependence on the railroad is such that any change in practice or pattern would substantially interfere with normal business operations. Apparently, because of a general absence of storage facilities in the South, the market dependence on the railroads is disproportionately large. There is a need for a more sophisticated approach to stockpiling and price forecasting within the Southern markets and an incentive, such as this seasonal rate increase, may be the very factor which will trigger a restructuring of attitudes. As indicated before in this justification statement, the innovative movement of grain from Official Territory producing points to the South actually created the markets which now exist. At least in great part. It is therefore logical to conclude that another adjustment in the Railroads' rates would have a comparable effect on attitudes of the now established markets.

V.

CONCLUSION

The Commission has recognized and adequately verbalized the intent of Congress in the Ex Parte 324 proceeding and ultimately in the promulgation of regulations to guarantee the proper publication of demand-sensitive rates. The intent is to aid the railroads in solving a problem of longstanding that could have been solved in part by shippers who have shown little or no concern toward taking sufficient steps to coordinate with the railroads in an effort to improve the overall movement of grain and grain products in the public interest.

Suffice it to say that the more protests filed with this Commission the clearer the indication that the rates proposed will accomplish exactly what they are intended to accomplish. *The graphic representations of the peak moving season cannot be refuted.* The comments which have been received through formal shipper hearings and informal discussions indicate that there is some inclination on the part of protestants to take the position that grain movements are not seasonal. Whether seasonal or just peak-period movements, there is no question that there is a need for demand-sensitive rates.

The Commission should recognize that there have been no major adjustments in SFA Territory rates (including the origin points in Indiana and Illinois) in 15 years. This fact in itself could account for the strong attitudes which have been expressed by those affected by this seasonal rate adjustment. It is always a difficult task to disrupt patterns and practices of long standing. In the opinion of the Railroads this is, in fact, the reason that Congress felt it neces-

sary to amend the Interstate Commerce Act to allow the publication of seasonal rates, *i.e.,* demand-sensitive rates.

WHEREFORE, the Southern Territory Railroads represented by the Southern Freight Association, respectfully file this statement of justification for publication concurrently with the filing of the demand-sensitive rates in Supplement Nos. 201, 137 & 23 to Southern Freight Tariff Bureau Freight Tariff Nos. 988-A, I.C.C. S-909, 908-B, I.C.C. S-999 & 972-F, I.C.C. S-1359, scheduled to become effective September 15, 1977.

Respectfully submitted,

BATES B. BOWERS

Of Counsel:

CHARLES N. MARSHALL
General Attorney
Southern Railway System
Post Office Box 1808
Washington, D. C. 20013

s/s WANDALEEN POYNTER
WANDALEEN POYNTER
Assistant General Attorney
Seaboard Coast Line Railroad Company
500 Water Street
Jacksonville, Florida 32202

Date: August 15, 1977

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all known parties of interest* by United States mail, first-class postage prepaid, this 16th day of August, 1977.

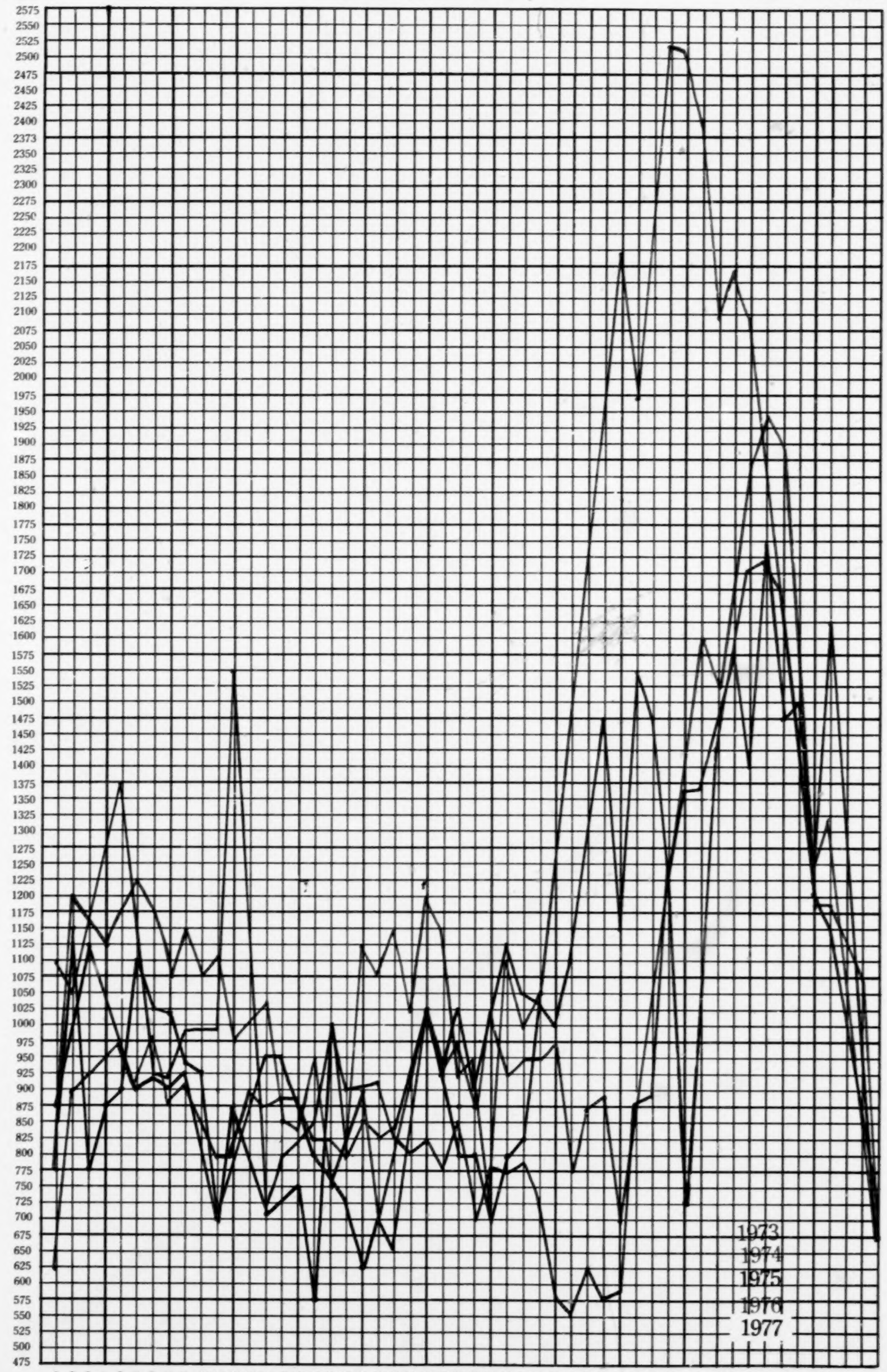
s/s Wandaleen Poynter

Wandaleen Poynter

*See Verified Statement of R. E. Thompson, Exhibit II.

GRAIN
Cars Loaded on Family Lines

EXHIBIT I (A)

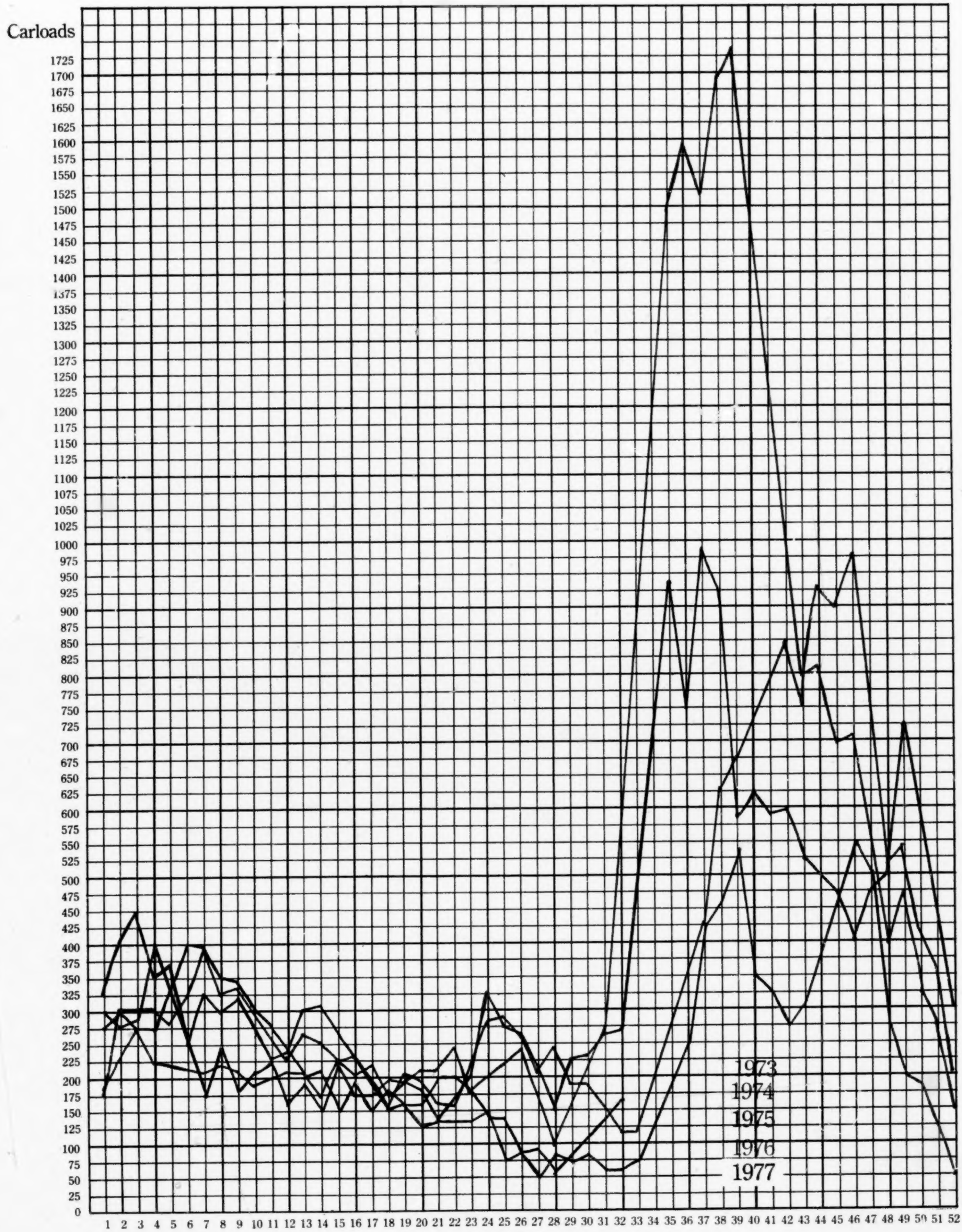


Source: CS-54-A

GRAIN

Cars Loaded on SCL RR

EXHIBIT I (B)



Source: CS-54-A

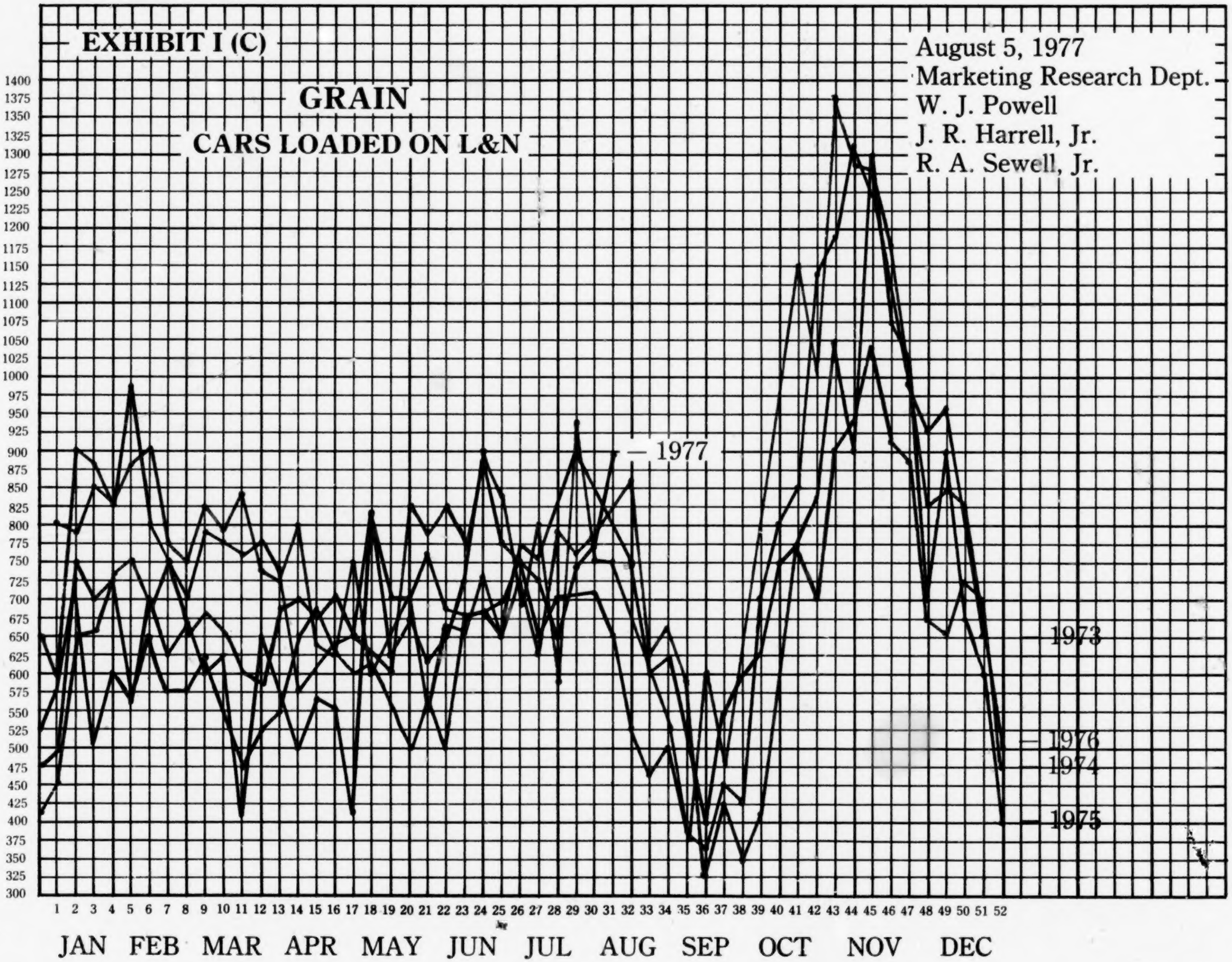


EXHIBIT I (C)
GRAIN
CARS LOADED ON L&N
August 5, 1977
Marketing Research Dept.
W. J. Powell
J. R. Harrell, Jr.
R. A. Sewell, Jr.
1977
1973
1976
1974
1975
1400 1375 1350 1325 1300 1275 1250 1225 1200 1175 1150 1125 1100 1075 1050 1025 1000 975 950 925 900 875 850 825 800 775 750 725 700 675 650 625 600 575 550 525 500 475 450 425 400 375 350 325 300
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52
JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC

GRAIN TRAFFIC

SOUTHERN RAILWAY CARLOADINGS - 1976 (Source: AAR CS-54-A) **Exhibit I (D)**

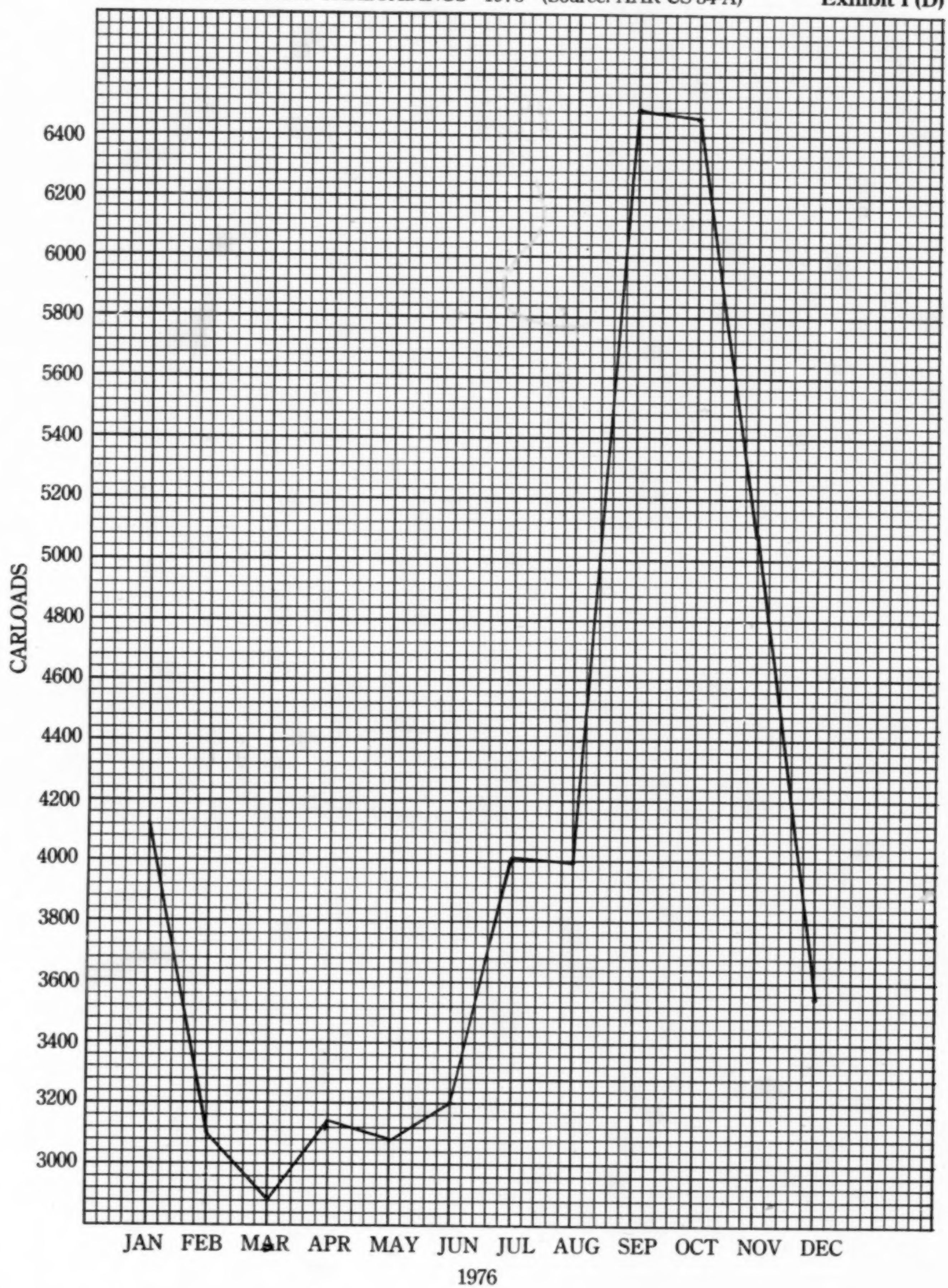


EXHIBIT II

VERIFIED STATEMENT OF R. E. THOMPSON

My name is R. E. Thompson. I have been employed by Southern Freight Association (hereinafter referred to as SFA) for approximately four years as Manager of Commerce. Prior to that time I was employed for more than 31 years with The Atlanta and West Point Railroad-Western Railway of Alabama and Georgia Railroad. (A&WP-WofA-GA RR) serving in practically every clerical position in the Freight Traffic Department, including five years service on the rate quotation desk and several years as Executive Rate Clerk and Chief Divisions Clerk. Subsequent positions in an official capacity with the Traffic Department of those railroads included three years as Assistant to General Freight Agent, three years as Assistant General Freight Agent, four and one-half years as General Freight Agent and as Traffic Manager from June 1, 1973, to October 15, 1973, at which time I accepted an appointment with Southern Freight Association as its Manager of Commerce.

During my employment with the A&WP-WofA-GA RR, it was my responsibility to supervise the rate making functions which included all freight rate matters and any adjustments relating to accessorial services. I also served those carriers as their representative on the Executive Committee and General Freight Committee of Southern Freight Association, as well as numerous special committees.

The rail carriers involved in the instant publications have caused to be published a 20% seasonal increase

in rates on whole grains and soybeans in railroad-owned cars during the period September 15, 1977 through December 15, 1977, from, to and between points in Southern territory, including certain points in Illinois and Indiana; and from Southern territory origins and certain origins in Illinois and Indiana to Florida, Gulf, South Atlantic and Virginia ports, for export. Exact details of the publication are outlined to the Commission in Exhibit A of Assistant Tariff Publishing Officer Twiggs' Application For Special Permission No. S-8472, dated August 1, 1977.

The proposed seasonal rates are in compliance with the desires of Congress wherein that body granted railroads authority to establish rates based on seasonal, regional or peak period demand for services in Public Law 94-210 or the so-called 4-R Act and which the Commission has placed in effect its guidelines in Ex Parte 324, *Standards and Expeditious Procedures For Establishing Railroad Rates Based On Seasonal, Regional, Or Peak-Period Demand For Services.* Likewise, the Congress and Commission have urged the railroads and shippers to take advantage of these new rules and to cooperate in establishing such procedures. This the railroads have done.

In connection with the efforts the railroads have made in cooperating with their shipper and receiver patrons, I think it proper to advise the Commission of the extensive handling the Southern territory railroads have given this matter with the shipping public. In August of 1976, the Southern carriers filed a proposal (Emergency Proposal 3983) suggesting seasonal rates on whole grains and soybeans almost

identical to those suggested in the instant publication. This proposal followed the normal course of action in connection with our Section 5(b) Agreement. In fact, there was not only extensive correspondence between the shippers, railroads and the Southern Freight Association but a public hearing held by the SFA Executive Committee on November 10, 1976. This proposal was later cancelled as no conclusive action had been taken within 120 days as required under the 4-R Act.

In December of 1976, another proposal (Emergency Proposal 33) was filed by the Southern carriers again suggesting almost identical provisions as that in the instant publication. This proposal was likewise subject to extensive handling and accorded a public hearing before the SFA Executive Committee on January 12, 1977. There were some 24 representatives at this hearing, including representatives from Georgia Feed and Grain Association, Georgia Poultry Federation, National Broiler Counsel, Southeastern Poultry and Egg Association, South Carolina Poultry Improvement Association, North Carolina Poultry Federation, Indiana Farm Bureau Cooperative Association and Georgia Freight Bureau. This proposal was postponed after the hearing before the Executive Committee and later withdrawn.

In June of this year Emergency Proposals Nos. 179 and 180 were filed suggesting the seasonal rates that are involved in the instant publication. As previously stated, these rates are very similar to those that were suggested in 1976, later withdrawn, and on which the carriers and shippers have had a full opportunity to exchange and benefit from each other's views as a

result of correspondence and two public hearings. Therefore, the according of a shipper hearing in connection with the instant publication (resulting from Emergency Proposals 179 and 180) would have been redundancy in view of the prior hearings held previously on November 10, 1976 and on January 12, 1977. Under the Section 5(b) procedures no shipper hearings are required in connection with emergency proposals even though, as a matter of discretion, the Chief Traffic Officers may schedule a shipper hearing in those instances where an objection is filed by a *member line* to an emergency proposal causing it to be considered by the Executive Committee. There were no objections filed by member lines to these proposals.

Complete details of the handling given these proposals are outlined in Exhibit A. Shown in Exhibit C is a list of all known parties who have expressed interest in SFA Emergency Proposals 179 and 180 — "Seasonal Rates On Whole Grains and Soybeans" —. Exhibit B is a list of shippers who have expressed interest in previous proposals suggesting seasonal rates on whole grains and soybeans. Further, a copy of this justification statement is being furnished to all known parties of interest shown in Exhibit Nos. B and C.

The proposed 20% seasonal increase during the harvest season will primarily affect those who contribute to the peak demand for transportation. Shippers who purchase grains and soybeans throughout the year will pay increased rates for only three months or only on twenty-five percent of their shipments. In other words, the 20% increase in rates during the harvest season will only amount to a five percent (5%)

increase throughout the year. Thus, this amounts to a lesser increase than the 7% carriers could obtain under the so-called yo-yo provisions of the 4-R Act.

As the Commission is aware the rail carriers are faced with a serious shortage and delay of cars during the peak season and of course the proposed seasonal increase of 20% should help alleviate this problem on this very costly equipment. For example, on the Family Lines (primarily the L&N and SCL) the cost of a 100-ton covered hopper car has increased from $19,000 in 1973 to $27,900 in 1977, or an increase in a four-year period of approximately 47%.

As shown in Mr. Sphuler's Exhibit No. III corn constitutes 79% of the total grain products that will be subject to the proposed 20% seasonal increase. Shown in my Exhibit No. D is corn production in the ten (10) states involved in the instant publication. It will be noted there has been an increase every year since 1972 with the exception of 1974. Also, when this ten state production is compared to total U.S. production, there has been a percentage increase every year since 1972. Also of interest is Exhibit No. E which shows the price of corn per bushel for each month of the years 1974 through 1976 and the first seven months of 1977. While the price of corn fluctuates from month to month, it can be seen from this Exhibit that, with the exception of the year 1974, the price of corn per bushel generally drops during the peak periods or seasonal months, September 15 through December 15. Therefore, with publication of the 20% increase in rates and the reduction in the price of corn per bushel during these seasonal months there will not likely be an increase in the total cost to the shipping public.

Therefore, it should be obvious that discouraging peak period movements will not force shippers to sell at depressed prices.

VERIFICATION

STATE OF FLORIDA)
) SS
COUNTY OF DUVAL)

R. E. Thompson, being duly sworn, deposes and says that he has read the foregoing statement and knows the contents thereof, and that the same are true as stated.

R. E. Thompson

Signed: ______________
R. E. Thompson

Subscribed and sworn to before me this ________ day of August, 1977.

/s/ Notary Public

My Commission expires:

SEAL

EXHIBIT A

Statement Showing Various Proposals that have been Issued Suggesting Seasonal Rates on Whole Grains and Soybeans

SFA Emergency Proposal 3983, dated August 27, 1976. Shipper hearing SFA Executive Committee, under Subject No. 5415, 10:00 A.M., Wednesday, November 10, 1976.

SFA Emergency Proposal 33, dated December 20, 1976. Shipper hearing SFA Executive Committee, under Subject No. 32, 10:00 A.M., Wednesday, January 12, 1977.

SFA Emergency Proposal 179, dated June 20, 1977. Advertised to Public in Weekly Docket No. 756, dated June 21, 1977, and Traffic Bulletin, dated June 25, 1977.
Amendment 1 to SFA Emergency Proposal 179, dated July 1, 1977. Advertised to Public in Weekly Docket No. 758, dated July 5, 1977, and Traffic Bulletin, dated July 2, 1977.
Disposition Advice 4789, dated July 29, 1977. Was issued to cover SFA EmPro. 179. Advertised to Public in Weekly Docket No. 763, dated August 9, 1977, and Traffic Bulletin, dated August 13, 1977.

SFA Emergency Proposal 180, dated June 20, 1977. Advertised to Public in Weekly Docket No. 756, dated June 21, 1977, and Traffic Bulletin, dated June 25, 1977.

Amendment 1 to SFA Emergency Proposal 180, dated July 1, 1977. Advertised to Public in Weekly Docket No. 758, dated July 5, 1977, and Traffic Bulletin, dated July 2, 1977.
Disposition Advice 4790, dated July 29, 1977, was issued to cover SFA Em.Pro. 180. Advertised to Public in Weekly Docket No. 763, dated August 9, 1977, and Traffic Bulletin, dated August 13, 1977.

Publication of rates authorized by Disposition Advice Nos. 4789 and 4790 made in SFTB Tariffs Nos. 988-A, ICC S-909, 908-B, ICC S-999 and 972-F, ICC S-1359, scheduled to become effective September 15, 1977.

EXHIBIT B

LIST OF SHIPPERS WHO HAVE EXPRESSED INTEREST IN PREVIOUS PROPOSALS SUGGESTING SEASONAL RATES ON WHOLE GRAINS AND SOYBEANS BUT NOT EMERGENCY PROPOSALS 179 AND 180

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27809

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Morgan Grain and Fertilizer
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EXHIBIT C

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Congress of the United States
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Exhibit D
Page 1 of 3

Statement Showing the Production of Corn, Soybeans and Wheat for the Years 1972 through 1976 in the Ten States Involved in the Instant Publication.

CORN
(1,000 Bushels)

States	1972	1973	1974	1975	1976
ALA.	26,160	28,060	29,900	34,980	49,352
FLA.	14,122	14,620	19,104	17,730	30,240
GA.	77,480	80,160	105,280	103,400	133,920
ILL.	1,014,750	981,590	821,700	1,253,960	1,250,830
IND.	507,936	534,480	387,660	551,740	693,000
KY.	83,248	85,850	95,200	87,780	138,720
N.C.	102,400	114,800	116,180	106,530	150,400
S.C.	23,625	23,650	31,262	34,650	46,690
TENN.	33,600	35,178	34,770	36,900	56,485
VA.	41,666	46,200	43,320	48,590	46,740
TOTALS	1,924,987	1,944,588	1,684,376	2,276,260	2,596,377
U.S. TOTAL	5,573,320	5,646,806	4,663,631	5,797,048	6,216,032
Percentage of U.S. Total	34.5	34.4	36.1	39.3	41.8

Exhibit D
Page 2 of 3

SOYBEANS
(1,000 Bushels)

States	1972	1973	1974	1975	1976
ALA.	16,000	20,370	23,460	32,095	29,280
FLA.	4,872	6,096	7,533	7,080	6,890
GA.	10,050	19,950	25,755	32,130	22,090
ILL.	259,440	281,295	202,560	295,920	241,920
IND.	108,796	135,135	97,250	121,605	108,240
KY.	24,948	29,070	28,080	32,400	28,355
N.C.	29,125	34,800	30,530	33,370	23,650
S.C.	19,980	23,750	23,125	30,360	21,420
TENN.	28,556	36,895	31,920	46,250	40,500
VA.	8,050	11,151	10,105	10,825	8,159
TOTALS	509,817	598,512	480,318	642,035	530,504
U.S. TOTAL	1,270,630	1,547,165	1,214,802	1,546,120	1,264,890
Percentage of U.S. Total	40.1	38.7	39.5	41.5	41.9

Exhibit D
Page 3 of 3

WHEAT
(1,000 Bushels)

States	1972	1973	1974	1975	1976
ALA.	2,200	2,024	2,990	3,240	3,375
FLA.	630	660	600	520	660
GA.	2,800	3,240	3,680	3,645	3,565
ILL.	54,000	39,000	51,900	67,470	72,150
IND.	39,648	24,605	50,040	64,500	57,600
KY.	7,020	5,412	12,285	11,968	10,230
N.C.	6,200	6,300	9,900	8,525	6,960
S.C.	2,720	2,525	3,950	4,185	3,625
TENN.	7,680	4,464	9,425	9,610	12,395
VA.	8,066	6,475	10,175	9,052	7,680
TOTALS	130,964	94,705	154,945	182,715	178,240
U.S. TOTAL	1,544,936	1,705,167	1,796,187	2,134,833	2,147,408
Percentage of U.S. Total	8.5	5.6	8.6	8.6	8.3

Source: Crop Production, Annual Summary, Crop Reporting Board, Statistical Reporting Service, U. S. Department of Agriculture, Washington, D. C.

EXHIBIT E.

STATEMENT OF CORN, WHEAT AND SOYBEANS PRICES IN DOLLARS AND CENTS PER BUSHEL BASED ON CHICAGO, ILL. MARKET ON OR ABOUT THE 15TH OF EACH MONTH FOR THE TIME PERIOD SHOWN

	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
1974												
Corn, 01-132	$2.90	$3.13	$2.99	$2.69	$2.70	$2.93	$3.35	$3.63	$3.55	$3.74	$3.48	$3.47
Wheat, 01-137	6.30	6.50	5.59	4.33	3.48	3.91	4.40	4.34	4.41	5.03	4.86	4.60
Soybeans, 01-144	6.17	6.39	6.23	5.56	5.42	5.47	6.97	7.55	7.57	8.33	7.57	7.28
1975												
Corn, 01-132	3.19	2.96	2.90	2.96	2.82	2.89	2.95	3.12	2.99	2.74	2.59	2.59
Wheat, 01-137	4.02	3.84	3.62	3.63	3.25	3.03	3.42	3.82	4.06	3.84	3.49	3.32
Soybeans, 01-144	6.33	5.68	5.56	5.76	5.73	5.15	5.58	5.97	5.55	4.97	4.70	4.59
1976												
Corn, 01-132	2.62	2.70	2.68	2.68	2.84	2.96	2.96	2.87	2.77	2.49	2.33	2.44
Wheat, 01-137	3.45	3.78	3.66	3.34	3.30	3.47	3.37	3.01	2.89	2.72	2.60	2.66
Soybeans, 01-144	4.65	4.74	4.66	4.71	5.21	6.25	6.64	6.30	6.59	6.23	6.58	6.86
1977												
Corn, 01-132	2.53	2.54	2.52	2.50	2.41	2.27	2.04					
Wheat, 01-137	2.73	2.74	2.63	2.53	2.35	2.29	2.20					
Soybeans, 01-144	7.08	7.25	8.33	9.74	9.50	8.18	6.28					

Source: Chicago, Ill. Board of Trade.

CHICAGO, ILL CASH PRICE OF SOYBEANS ON OR ABOUT
THE 15th OF EACH MONTH, FOR YEARS SHOWN.

Source: Chicago Board of Trade

EXHIBIT F

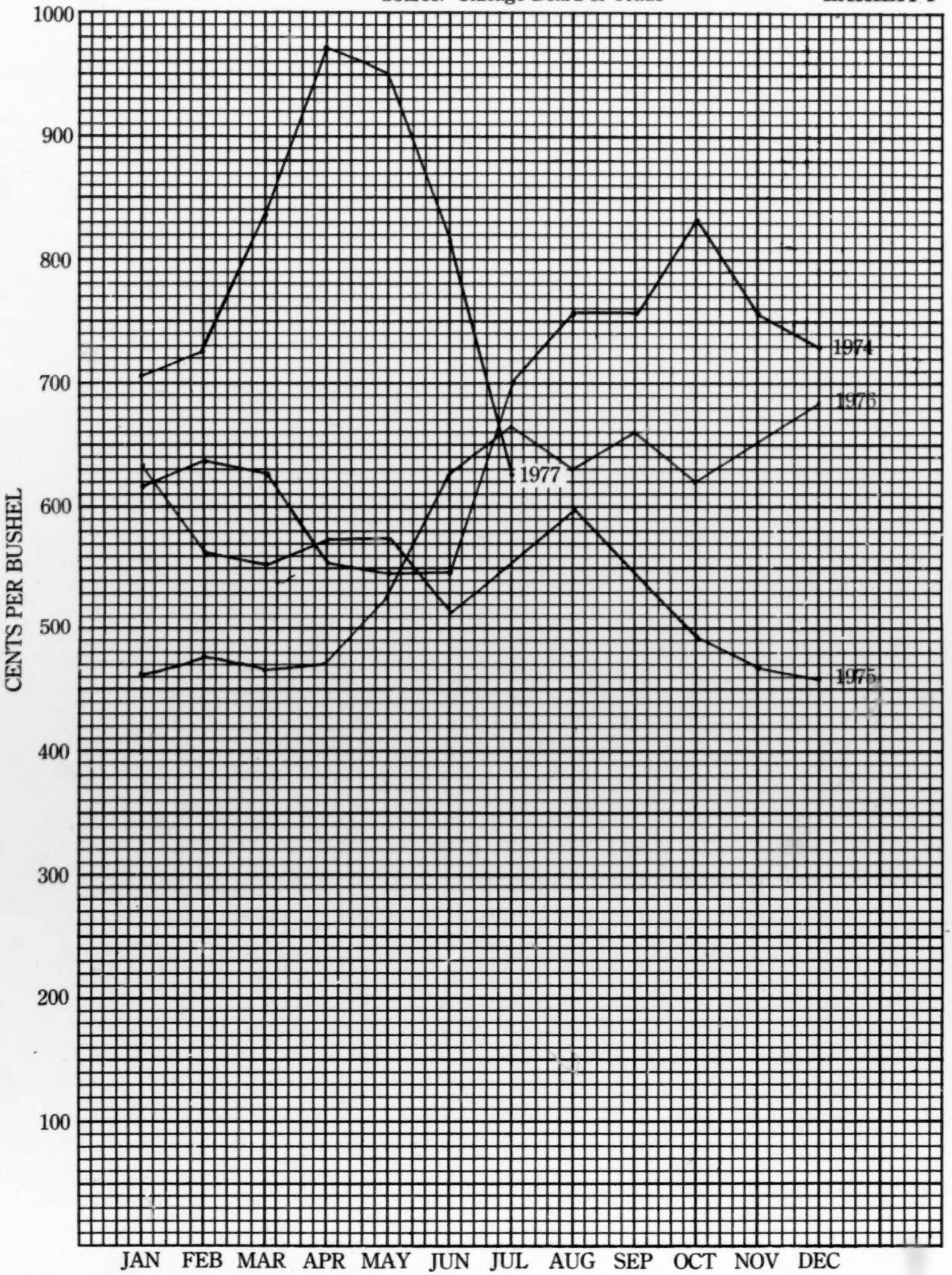
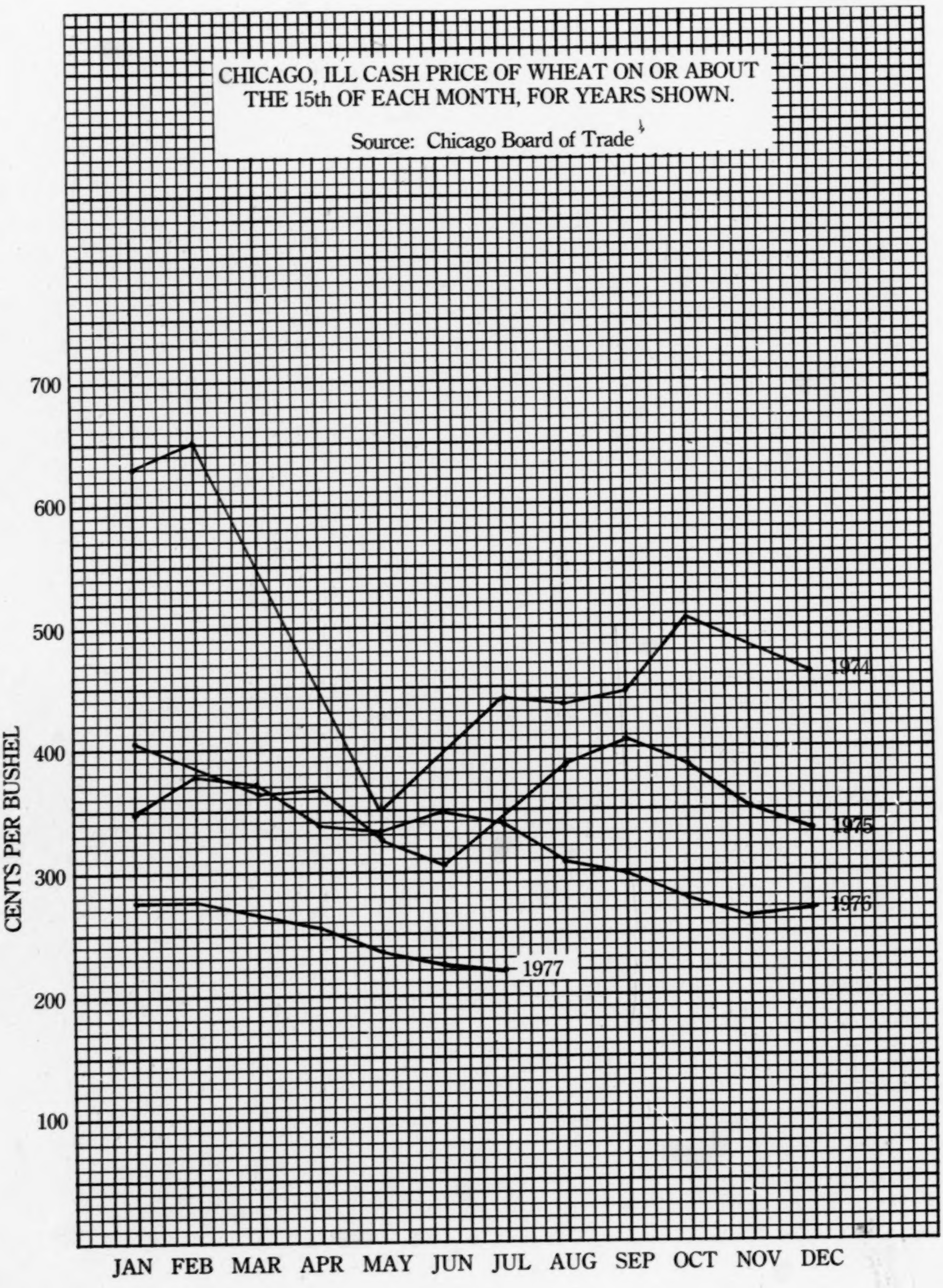


EXHIBIT G


CHICAGO, ILL CASH PRICE OF WHEAT ON OR ABOUT THE 15th OF EACH MONTH, FOR YEARS SHOWN.
Source: Chicago Board of Trade
CENTS PER BUSHEL
700
600
500
400
300
200
100
JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
1974
1975
1976
1977

CHICAGO, ILL CASH PRICE OF CORN ON OR ABOUT
THE 15th OF EACH MONTH, FOR YEARS SHOWN.
Source: Chicago Board of Trade

EXHIBIT H

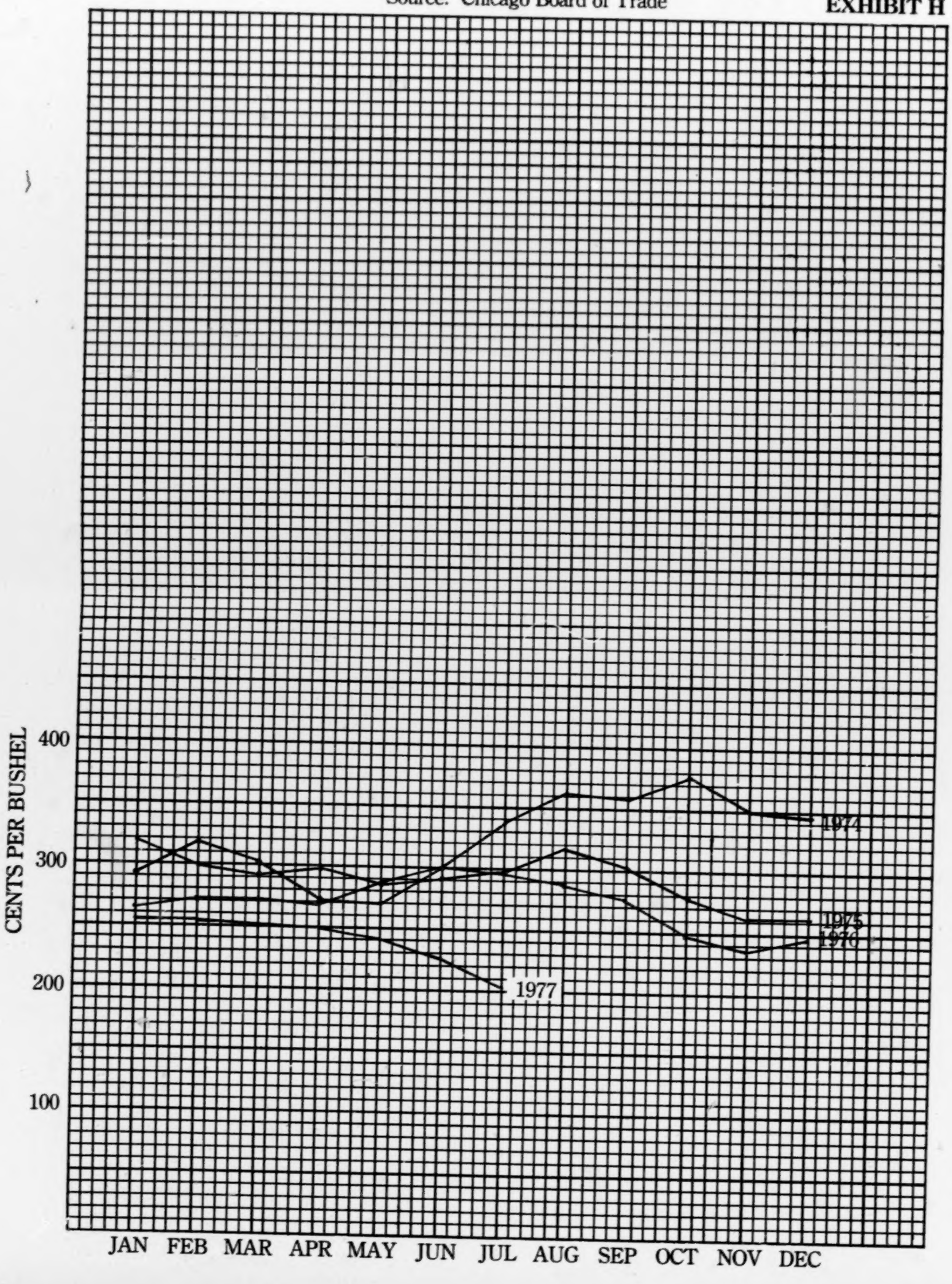


EXHIBIT III

VERIFIED STATEMENT OF FRANCIS M. SPUHLER

My name is Francis M. Spuhler. I am employed as Senior Cost Analyst with the Southern Freight Association located at 1920 L Street, N. W., Washington, D. C.

I have had over twenty years experience in accounting, statistical and cost analysis work in the rail transportation industry. During the past eleven years this work has been with the Association of Southeastern Railroads and the Southern Freight Association, first as Cost Analyst and then as Senior Cost Analyst. During this period I have prepared and presented cost, statistical and financial data before the Interstate Commerce Commission and all state regulatory bodies within Southern Territory.

I am a graduate of Benjamin Franklin University in Washington, D. C., having majored in accounting and finance. I have also taken additional credit courses in business and finance from the Wharton School of Finance, University of Pennsylvania, in Philadelphia.

This statement is made on behalf of Southern Territory railroads to comply with requirements of Ex Parte 324. I am advised by traffic officers of the SFA railroads that the proposed rate adjustment is not based upon costs, and the revenue-cost relationships on grain movements set forth in my Appendix B are shown solely for the information of the Commission. Appendix B does provide more current revenue-cost

data than would be shown in the latest (1972) burden study (Statement No. 153-72).

My Appendix B utilizes 1975 statistics from the 1% waybill sample prepared by the U. S. Department of Transportation. To the service units derived from this 1% waybill study (carloads, tons, car miles and ton miles), I have applied 1975 Southern Region unit costs. These unit costs result from application of the computerized Rail costing program to the expenses and statistics of all Class I railroads in the South for 1975.

Appendix B shows the results for corn and for total movements of grain. Corn is the predominant grain commodity, constituting 79% of the total. The ratios of revenue to variable cost for 1975 indicate that there are large movements of grain moving at rates which are barely compensatory. These low rate levels focus the attention of rail management on the difficulty of attaining earnings sufficient to justify acquisition of new equipment for hauling grain.

Appendix A shows the ever-increasing cost of new equipment. In just 3 years the average cost of a new covered hopper car has risen an incredible 50% ($27,497 in 1976 vs. $18,000 in 1973). Ex Parte increases have usually been designed to help recoup *past* cost escalations (mostly labor and materials), and they have done little to ease the *future* cost of replacing existing equipment at inflated prices.

The average daily freight car mileage in 1976 amounted to 56.9 miles per serviceable car on line. This daily mileage fluctuates with higher or lower

business levels. At an average freight train speed of 20 miles per hour, including stops, the average freight car spent 12% of its time in road trains, loaded or empty. The remainder of the time was spent in loading and unloading at shippers' plants, moving within terminals, classification and placement into trains or standing idle during seasonal lulls in car demand. (Source: Yearbook of Railroad Facts — 1977 Edition.)

It is obvious from the above facts that very expensive equipment is lying idle a great portion of the time and that it is imperative that rail management reduce this tremendous economic waste.

Francis M. Spuhler

Francis M. Spuhler

VERIFICATION

STATE OF FLORIDA)
) S S
COUNTY OF DUVAL)

Francis M. Spuhler, being duly sworn, deposes and says that he has read the foregoing statement and knows the contents thereof, and that the same are true as stated.

Signed: Francis M. Spuhler
Francis M. Spuhler

Subscribed and sworn to before me this 11th day of August, 1977.

Notary Public

My Commission expires:

SEAL

APPENDIX A

AVERAGE COST OF NEW FREIGHT-TRAIN CARS INSTALLED, BY KIND OF CAR*

Class I Line-haul Railroads

Year	Box cars		Flat cars		Rack cars	Gondola cars	Hopper cars		Refrig-erator cars	Tank cars	All freight-carrying cars *d*	Caboose cars	All freight-train cars
	General service	Special service *a*	General service	Special service			Open top	Covered					
1939	$ 2,742	$ 3,670	$ 2,171	*b*	—	*c*	$ 2,328	*c*	—	—	$ 2,514	$ 3,483	$ 2,515
1940	2,772	3,451	2,242	*b*	—	*c*	2,567	*c*	$ 5,486	—	2,693	3,489	2,698
1941	2,944	3,209	2,316	*b*	—	*c*	2,677	*c*	—	$ 1,056	2,842	3,906	2,851
1942	3,027	3,342	2,609	*b*	$ 1,700	*c*	2,824	*c*	4,737	3,636	2,955	3,960	2,970
1943	3,068	3,193	2,379	*b*	—	*c*	2,994	*c*	—	—	2,954	4,051	2,968
1944	3,302	3,313	2,855	*b*	—	*c*	2,813	*c*	—	—	3,000	5,043	3,026
1945	3,297	3,795	2,553	*b*	—	*c*	2,752	*c*	—	—	3,079	4,732	3,084
1946	3,726	4,951	3,266	*b*	—	*c*	3,282	*c*	9,309	—	3,583	4,373	3,589
1947	4,185	4,736	3,478	*b*	4,196	*c*	3,634	*c*	8,304	—	4,021	6,649	4,030
1948	4,250	5,166	3,504	*b*	—	*c*	3,837	*c*	7,996	—	4,054	7,058	4,065
1949	4,568	*a*	4,461	*b*	6,524	*c*	4,603	*c*	—	7,150	4,594	7,498	4,619
1950	5,135	*a*	5,112	*b*	—	*c*	5,350	*c*	8,259	—	5,274	7,955	5,300
1951	5,457	*a*	5,631	*b*	6,290	*c*	5,464	*c*	6,980	—	5,493	7,765	5,508
1952	5,859	*a*	6,214	*b*	7,350	*c*	5,814	*c*	9,260	—	5,904	11,232	5,948
1953	6,346	*a*	6,744	*b*	—	*c*	6,221	*c*	9,544	8,950	6,319	11,485	6,332
1954	6,713	*a*	7,644	*b*	5,595	*c*	7,656	*c*	12,870	13,490	7,317	9,877	7,323
1955	7,515	8,919	8,692	*b*	7,733	$7,915	6,745	$8,122	10,774	10,439	7,795	12,730	7,839
1956	7,891	10,276	9,660	*b*	7,428	8,630	7,344	8,721	21,702	10,830	8,136	15,637	8,182
1957	8,888	11,023	8,916	*b*	10,149	8,641	7,828	9,437	17,484	11,690	8,667	19,116	8,688
1958	8,712	11,111	15,856	*b*	10,835	9,175	8,485	10,017	14,982	10,538	9,144	12,159	9,151
1959	9,851	12,618	13,120	*b*	13,288	8,409	8,715	11,532	15,667	13,693	10,319	17,240	10,380
1960	10,629	12,767	12,254	*b*	13,712	13,521	8,866	13,892	16,529	—	11,100	16,497	11,115
1961	10,715	13,000	13,970	*b*	14,765	9,573	8,882	11,615	20,166	—	11,315	16,191	11,392
1962	11,469	14,803	12,778	*b*	15,410	12,313	8,586	15,263	17,617	19,721	11,777	17,787	11,793
1963	14,265	15,679	12,596	*b*	13,742	8,815	9,737	14,455	20,453	18,517	14,055	19,588	14,111

Year	Box cars: General service	Box cars: Special service *a*	Flat cars: General service	Flat cars: Special service	Rack cars	Gondola cars	Hopper cars: Open top	Hopper cars: Covered	Refrig-erator cars	Tank cars	All freight-carrying cars *d*	Caboose cars	All freight-train cars
1964	$13,083	$17,534	$15,462	*b*	$12,000	$12,504	$10,380	$14,673	$21,914	$19,339	$14,061	$17,759	$14,085
1965	14,610	19,821	15,682	$17,371	13,311	12,451	11,085	14,582	22,359	18,150	15,448	19,752	15,466
1966	12,167	18,129	14,725	17,593	13,564	12,853	11,794	15,487	23,358	e34,041	15,320	18,650	15,338
1967	11,955	17,877	16,524	19,262	12,632	13,028	10,424	15,074	25,313	27,423	14,591	21,727	14,608
1968	10,061	19,398	13,956	15,534	*f*	11,746	11,447	14,728	28,307	—	13,471	21,168	13,553
1969	11,733	18,007	13,759	18,107	*f*	13,754	12,558	15,201	29,957	—	15,607	17,415	15,625
1970	13,355	20,912	15,534	22,275	*f*	14,203	12,726	16,221	31,592	—	17,163	19,390	17,199
1971	14,219	18,640	10,495	19,068	*f*	15,749	13,197	15,930	32,167	—	16,293	24,874	16,352
1972	19,258	23,533	—	17,666	*f*	15,111	15,580	18,079	32,427	—	18,051	25,640	18,219
1973	18,000	22,000	—	18,000	*f*	15,600	16,000	18,000	30,000	20,000	18,800	29,000	18,900
1974	22,900	34,000	28,000	20,000	*f*	21,500	18,800	20,000	—	21,700	21,800	31,000	21,900
1975*p*	31,168	37,005	32,815	40,201	*f*	27,076	25,834	26,480	42,553	22,300	27,777	41,023	27,921
1976*p*	30,923	35,644	27,040	45,695	*f*	26,856	25,495	27,497	—	—	27,983	41,648	28,099

a - Reported as "automobile" prior to 1948 and included with general service box cars for years 1949 through 1954.
b - Included with general service flat cars.
c - Included with open top hopper cars.
d - Includes all other freight-train cars not separately shown.
e - Reflects installation of two experimental 38,000-gallon tank cars at a unit cost of $76,765.
f - Included with special service flat cars.
p - Preliminary.
* - The variations in the average cost of freight cars from year to year can relate, in part, to changes in the mix of car sub-types within each category and to differences in the capacities of cars installed.

Source: Interstate Commerce Commission, TRANSPORT STATISTICS IN THE UNITED STATES; Year 1975 and 1976 from Annual Reports of Railroads.

APPENDIX B

DEVELOPMENT OF REVENUE-COST RELATIONSHIPS FOR 1975 GRAIN MOVEMENTS WITHIN THE SOUTH AND FROM OFFICIAL TERRITORY TO THE SOUTH1/

STCC	Car Loads @ $105.73	Tons @ .674¢	Way Car-Miles @ $.57415	Thru Car-Miles @ $.46279	Ton-Miles @ .40055¢	Total-Var. Cost & Revenue
0113-Grain SOU-SOU						
Units	356	30978	21004	83996	9449000	
Var. Cost	$37640	$ 209	$12059	$38873	$ 37848	$126629
Rev.						161814
Ratio Rev/Cost						128

0113-Grain						
OFF-SOU						
Units	468	43972	27612	258388	27058000	
Var. Cost	$49482	$ 296	$15853	$119579	$108381	$293591
Rev.						$296162
Ratio Rev/Cost						101
01132-Corn						
SOU-SOU						
Units	225	19558	13275	47725	5369000	
Var. Cost	$23789	$ 132	$7622	$22087	$ 21506	$ 75136
Rev.						$ 95585
Ratio Rev/Cost						127
OFF-SOUTH						
Units	423	39856	24957	231043	24368000	
Var. Cost	$44724	$ 269	$14329	$106924	$ 97606	$263852
Rev.						$262170
Ratio Rev/Cost						99

1/ Movement data taken from Statement TD-1, U. S. Department of Transportation, 1% waybill sample for terminations in the year 1975. Variable costs are based on Southern Region 1975 unit costs as prepared by Southern Freight Association and assume all grain movements in covered hopper cars. For purposes herein the costs of railroad-owned and shipper-owned cars are considered identical.

EXHIBIT IV

Pounds of Broilers Produced in the Northeast and Southeast, 1957-1972

Year	Northeast[1]	Southeast[2]
1957	595,143	2,159,528
1958	642,543	2,621,541
1959	609,270	2,974,660
1960	561,635	3,223,816
1961	571,122	3,861,864
1962	543,279	3,990,327
1963	539,525	5,298,030
1964	536,945	4,500,278
1965	547,062	4,963,174
1966	555,960	5,637,463
1967	558,693	5,818,331
1968	558,580	5,979,465
1969	558,076	6,392,501
1970	588,756	6,920,095
1971	586,313	8,540,633
1972	575,372	7,578,704

1/ Northeast includes New England, New York, New Jersey and Pennsylvania.

2/ Southeast includes the states of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Arkansas.

Source: Chickens, Eggs and Broilers: Production, Disposition, Cash Receipts and Gross Income, (Statistical Reporting Service, U.S.D.A., (various yearly issues)).

EXHIBIT V
Page 1 of 2

STATE
STORAGE CAPACITY BY BUSHELS

State '76	'75	Jan. 1, 1976 1,000 bu.	Revised Jan. 1, 1975 1,000 bu.	Changes + or – 1,000 bu.
1. Kansas	1	780,000	782,000	– 2,000
2. Texas	2	752,020	719,040	+ 32,980
3. Illinois	3	664,600	627,800	+ 36,800
4. Iowa	4	557,000	524,000	+ 33,000
5. Nebraska	5	453,560	452,660	+ 900
6. Minnesota	6	352,130	357,270	– 5,140
7. Ohio	7	208,000	193,000	+ 15,000
8. Indiana	10	201,050	186,410	+ 14,640
9. Missouri	8	193,270	192,730	+ 540
10. Oklahoma	9	190,200	191,790	– 1,590
11. Washington	11	165,850	164,090	+ 1,760
12. Arkansas	12	162,880	155,480	+ 7,400
13. N. Dakota	13	141,200	144,550	– 3,350
14. California	15	119,790	103,680	+ 16,110
15. Wisconsin	14	118,900	118,060	+ 840
16. Colorado	17	85,600	81,100	+ 4,500
17. S. Dakota	16	83,280	83,440	– 160
18. Louisiana	18	78,200	76,870	+ 1,330
19. New York	19	68,030	67,510	– 520
20. Michigan	20	67,250	65,640	+ 1,610
21. Mississippi	22	66,320	62,580	+ 3,740
22. Oregon	21	60,330	58,700	+ 1,630
23. Idaho	24	55,170	51,860	+ 3,310
24. N. Carolina	23	54,990	52,730	+ 2,260
25. Montana	25	49,260	47,920	+ 1,340
26. Tennessee	26	42,750	42,390	+ 360
27. Kentucky	27	40,440	38,230	+ 2,210

EXHIBIT V
Page 2 of 2

STATE
STORAGE CAPACITY BY BUSHELS

State *'76*	*'75*	Jan. 1, 1976 *1,000 bu.*	Revised Jan. 1, 1975 *1,000 bu.*	Changes + or – *1,000 bu.*
28. Georgia	29	37,900	36,400	+ 1,500
29. Maryland	28	36,490	36,790	– 300
30. Alabama	34	32,400	25,900	+ 6,500
31. Arizona	30	30,580	28,910	+ 1,670
32. S. Carolina	31	28,310	27,760	+ 550
33. Virginia	33	27,600	26,500	+ *1,100*
34. Pennsylvania	32	25,740	26,030	– 290
35. New Mexico	35	17,360	16,870	+ 490
36. Delaware	37	17,240	16,640	+ 600
37. Utah	36	16,960	16,750	+ 210
38. Wyoming	39	6,650	5,040	+ 610
39. Florida	38	5,560	5,420	+ 140
40. New England	40	3,800	3,560	+ 240
41. New Jersey	41	2,350	2,370	– 20
42. W. Virginia	43	390	270	+ 120
43. Nevada	42	300	300	——
U. S. Total		6,102,880	5,918,230	

Source: Agri-Business Buyers' Reference

EXHIBIT VI

Excerpt from

STATEMENT OF A. DANIEL O'NEAL, CHAIRMAN, INTERSTATE COMMERCE COMMISSION BEFORE THE SUBCOMMITTEE ON SURFACE TRANSPORTATION OF THE SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION ON THE IMPLEMENTATION OF AND NEED FOR AMENDMENTS TO THE RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

July 29, 1977

Mr. Chairman, Members of the Subcommittee:

Good morning. I want to thank the Chairman and members of the Surface Transportation Subcommittee for giving the Commission this opportunity to present its views on the implementation of and need for amendments to the Railroad Revitalization and Regulatory Reform Act of 1976 ("4-R Act"). I particularly want to thank the Subcommittee for permitting me to address both the Title VIII State Rail Assistance programs and broader aspects of the 4-R Act. I realize that this required adjustment in the Subcommittee's scheduling, and I appreciate the consideration you have shown the Commission in this matter.

The 4-R Act also requires the establishment of expeditious procedures for Commission review of seasonal, peak or regional rates. These procedures are to replace the conventional procedures and are designed to provide incentive to shippers to reduce peak period shipments by rescheduling; generate additional revenue for railroads; and improve utilization of cars, movements, level of employment, and financial stability of markets served by railroads.

The Commission's implementation of this section is contained in its new rules adopted in Ex Parte No. 324. The rule, like the law, is primarily procedural; however, it does contain major new substantive features.

First, shippers are protected from cancellation where they have made substantial investments to take advantage of the demand-sensitive rates, and, second, a railroad can cancel an unsuccessful rate on 30-days' notice.

Moreover, a particularly important feature of the new rules is a provision that the Commission will not suspend a cancellation of such a rate for three years under most circumstances. The reason this is important is that railroads have frequently objected to instituting special rates out of fear that would have difficulty getting rid of ones that do not succeed.

Our preliminary statistical data review shows that from 25 to 30 percent of all rail traffic is peak or seasonal in nature, and that this traffic is largely concentrated in the Midwest and West. Agricultural products (grain, fresh produce, and miscellaneous field

crops) are almost entirely seasonal, fertilizer materials substantially seasonal, metallic ores 80-percent seasonal, stone and gravel 40-percent seasonal, and assembled automobiles 50-percent seasonal.

Elasticity studies indicate that a premium peak rate of 35 percent above off-peak rates could be effective in spreading out grain shipments. Comparable figures would be 10 to 20 percent on iron ore and 10 percent on gravel. Any increase would likely result in loss of fresh produce traffic.

These types of rates, while not unprecedented, hold new potential for railroads. Widespread establishment of the rates will probably be slow. Individual railroads are faced with different seasonal patterns and many of the rates will have to be joint rates. Railroads must make careful studies of the seasonal characteristics of traffic and demand elasticities before they can propose a rate rationally. If it is a joint rate, other carriers must concur and this could be difficult. In addition, it appears that marketing influences may exert greater influence than the incentives offered under this provision. World grain prices, for example, may be more influential to grain movement than seasonal rate incentives and almost no seasonal rate change applied to new automobiles would likely influence movement of autos.

There are also some potential procedural difficulties. Proposed increased rates are likely to be protested. If an investigation is instituted, carriers must submit justification statements. The data are quite different than normally required and this poses new challenges to carriers in meeting evidentiary tests.

Probably the most important factor restraining the implementation of these rates is that it represents a substantial change in the ways railroads have traditionally priced traffic. Such changes will require considerable time for the carriers to adjust to a new system.

Another change brought about by Title II of the 4-R Act is reform of railroad rate bureaus, including such new features as a prohibition against bureau protest of carriers' independently filed rate proposals,[1] and a prohibition against bureau participation in agreements with respect to single-line rates established by any carrier. The Commission has commenced, and in some cases completed the record and issued decisions in a number of proceedings relating to new bureau agreements under the revised standards of the new statute. As envisioned by the statute, both the Department of Justice and the Federal Trade Commission have participated in these proceedings.

One technical problem has emerged with respect to the new railroad rate bureau statute. The 4-R Act created a new section 5b limited to agreements among railroads. Section 5a, which now governs rate bureaus of other modes, was amended by deleting railroads from the definition of Part I carriers. The drafters, however, did not delete railroads from the classes of carriers which might propose an intermodal rate bureau agreement under section 5a(4).

1/ Bureau protests of member carriers' independent action proposals were prohibited in Ex Parte No. 297, *Rate Bureau Investigation*, 349 I.C.C. 811, 351 I.C.C. 437, recently sustained by the United States Court of Appeals for the Fourth Circuit in *Motor Carriers Traffic Assn., et al.* v. *United States, et al.*, No. 76-1329 (decided July 21, 1977).

EXHIBIT VII

AVERAGE DAILY SHORTAGE GRAIN CARS ON L&N

Week Ending			Grain Covered Hoppers
Dec.	20	75	610
Dec.	27	75	62
Jan.	3	76	98
Jan.	10	76	177
Jan.	17	76	206
Jan.	24	76	177
Jan.	31	76	148
Feb.	7	76	174
Feb.	14	76	187
Feb.	21	76	197
Feb.	28	76	126
Mar.	6	76	119
Mar.	13	76	201
Mar.	20	76	339
Mar.	27	76	253
Apr.	3	76	160
Apr.	10	76	136
Apr.	17	76	180
Apr.	24	76	94
May	1	76	99
May	8	76	160
May	15	76	199
May	22	76	145
May	29	76	170
June	5	76	105
June	12	76	113
June	19	76	141
June	26	76	197
July	3	76	125
July	10	76	117
July	17	76	115
July	24	76	163
July	31	76	116
Aug.	7	76	20
Aug.	14	76	0
Aug.	21	76	0
Aug.	28	76	7
Sept.	4	76	12
Sept.	11	76	37
Sept.	18	76	89
Sept.	25	76	353
Oct.	2	76	277
Oct.	9	76	185
Oct.	16	76	269
Oct.	23	76	219
Oct.	30	76	173
Nov.	6	76	181
Nov.	13	76	216
Nov.	20	76	174
Nov.	27	76	79
Dec.	4	76	49
Dec.	11	76	63

EXHIBIT VIII

EMBARGOES

CSD Embargo *No. 7639* — Effective October 8, 1976
Cancelled October 11, 1976
Against Public Grain Elevator, *Mobile, Ala.*

CSD Embargo *No. 7643* — Effective October 20, 1976
Cancelled November 2, 1976
Against South Carolina Farm Bureau Marketing Association Grain Elevator, *Charleston, S. C.*

CSD Embargo *No. 7644* — Effective October 20, 1976
Cancelled November 2, 1976
Against Cargill at *Gainesville, Ga.*

CSD Embargo *No. 7647* — Effective October 26, 1976
Cancelled November 18, 1976
Against Public Grain Elevator, *Mobile, Ala.*

CSD Embargo *No. 7648* — Effective November 11, 1976
Cancelled November 16, 1976
Against Cargill Corn Syrup & Starch, *Memphis, Tenn.*

CSD Embargo *No. 7651* — Effective November 16, 1976
Cancelled December 2, 1976
Against Central Soya & Co., Inc. — *Chattanooga, Tenn.*

CSD Embargo *No. 7653* — Effective November 18, 1976
Cancelled December 2, 1976
Against Cargill, Inc. — Port of Mobile — *Mobile, Ala.*

SCL Embargo *No. 5-76* — Effective October 11, 1976
Cancelled October 26, 1976
Against Continental Grain Co. — *Norfolk-Portsmouth, Va.*

SCL Embargo *No. 6-76* Effective October 28, 1976
Cancelled November 1, 1976
Against Cargill, Inc. — *Norfolk-Portsmouth, Va.*

N&PBL Embargo *No. 2-76* — Effective December 10, 1976
Cancelled December 15, 1976
Against Continental Grain — *Norfolk, Va.*

N&PBL Embargo *No. 2-76* — Effective December 10, 1976
Cancelled December 20, 1976
Against Cargill, Inc., *Cheseapeake, Va.*

EXHIBIT IX

VERIFIED STATEMENT OF A. C. JONES, JR.

My name is A. C. Jones, Jr. My address is 908 West Broadway, Louisville, Kentucky. I now hold the position of General Manager-Transportation of the Louisville and Nashville Railroad Company ("L&N"), being appointed April 1, 1977. In this position I have general supervision over and responsibility for train operations on the entire L&N system. Prior to my appointment, I held the position of Division Superintendent at Evansville, Indiana. I began my service with the Seaboard Airline Railroad on June 12, 1951, subsequent to that having held various positions with the Georgia Railroad-A&WP, until the time of my appointment as Superintendent at Evansville, Indiana.

Through the use of records maintained in my office and my general knowledge of railroad operations, it is my opinion that the cost of handling grain cars increases during times of peak loading. This condition is attributable to a number of reasons, some of which I will elaborate on later. First, let me explain, grain moves from the fields to a relatively large number of grain elevators by truck. From there, it is transported by rail cars to a relatively few number of unloading points. These include processors, storage warehouses and to ports for export.

Inefficiencies occur in equitably distributing empty cars to a large number of users after which the loads must be marshalled into a relatively few number of train yards which are not designed to handle the volume of cars produced during peak loading seasons.

From these train yards they move to unloading points where they are subject to lengthy delay brought on by the inability of consignees to accept the volume being received. This deficiency at the unloading point is caused by limited storage capacity, limited track facilities, limited switching capabilities and, in the case of export, a shortage of cargo ships and berthing capabilities.

I am citing below inefficiencies peak grain loading periods have on the orderly operation of our railroad and the resultant adverse effect on our grain fleet:

1. Line of road operations suffer as a result of grain cars, both loaded and empty, placed on side tracks and passing tracks. The movement of cars into and out of these tracks curtail through freight trains causing a secondary effect on locals switching cars in and out of grain elevators. Thus, there is a general slow-down of trains and car movements.

2. Tracks into and on the property of elevators are generally incapable of handling the number of rail cars necessary to keep their operation fluid, resulting in additional switching oftentimes adversely affecting main line operations.

3. As grain cars move into and out of terminals, congestion is created not only by the large volume of such shipments, but the inability of trains to move with consistency over the road due to the necessity to employ the main line for switching elevators.

4. The relatively high density of grain cars limits the number of such cars which can be placed on trains. As

a result, more trains with fewer cars must be employed to move this traffic. The obvious result is main line congestion.

5. The number of train crews employed by the L&N coincides with normal traffic flows in scheduling train movements. During peak grain loading periods a shortage of train and switching crews occurs. Often shipments are delayed for no other reason than the unavailability of train crews. This problem is further compounded by the necessity to pay premium wages to crews for overtime work.

6. Delays in locomotive movements during the peak grain season not only result in inability efficiently to supply power in the grain producing areas, but also reduces the railroad's ability to supply power demands for the system as a whole. The peak period movements generally create an adverse operating situation.

7. The delay of grain cars at unloading points during peak grain seasons is most prevalent. It is not uncommon for such facilties to delay cars as long as 30 days. This is particularly true at port facilities where embargos preventing the movement of grain to such facilities are commonplace. The result of this action is obvious.

In conclusion, the peak grain loading periods have a marked adverse effect on the car costs, terminal operations and over-the-road movement of trains.

VERIFICATION

STATE OF FLORIDA)
) SS
COUNTY OF DUVAL)

A. C. Jones, Jr., being duly sworn, deposes and says that he has read the foregoing statement and knows the contents thereof, and that the same are true as stated.

Signed: A C Jones Jr
A. C. Jones, Jr.

Subscribed and sworn to before me this 11th day of August, 1977.

Ralph L. Creech

Notary Public

My Commission expires:

SEAL

EXHIBIT X

VERIFIED STATEMENT OF R. A. WHARTON

My name is R. A. Wharton. I am Assistant Vice President Transportation of Southern Railway Company and affiliates with offices in Atlanta, Ga. I have had experience in all facets of operations with Southern Railway Company for the past 27 years. My present responsibilities include supervision of the control center in Atlanta from which Southern distributes cars throughout its system.

I understand that Southern and other carriers in the South propose to publish increased rates on grain to be effective during the peak shipping season. I am advised that one of the purposes of this increase is to help discourage movement during the peak season and encourage shippers to defer their movements until the off-peak period after the increased rate expires.

Any rate proposal which will encourage shippers to even the flow of their traffic throughout the year is something which I support wholeheartedly.

One of the projects with which I have been involved for many years is a national project sponsored jointly by the Association of American Railroads, Federal Railroad Administration, shippers, and railway labor, to seek ways to improve car utilization. At the same time, Southern has been deeply involved in an effort, involving studies by MIT, to improve service reliability for all shippers. These two programs are closely related and have revealed that good service is the keystone of good car utilization. As a result of these two studies, Southern has begun to develop a finely tuned operating plan which involves control of the

performance of many different units of production, such as train arrivals and yard performance.

What we have found is that *balance* is very important to the performance of the system as a whole. Surges of traffic cause performance of the whole railroad to deteriorate. And our greatest surge comes in grain.

To show how the seasonal peak affects our supply of cars, I am attaching two tables. The first (Table I) shows surplus grain cars daily for a two year period. Note that there is no surplus shown for the fall months, months when a car shortage develops. Table II shows surpluses and shortages of LO covered hopper cars. Again, fall is the peak season. The difference between the two tables is that Table I shows only the high-cube covered hoppers regularly used for grain movements. Table II shows all LO covered hoppers and includes lower-cube cars which are normally used for non-grain commodities (though they too may be pressed into grain service during the peak season).

In other words, peak season movements of grain have a serious adverse effect upon shipers of *all* traffic, not just the grain shippers. Our ability to furnish equipment for grain loading is strained, but at the same time the utilization of our entire fleet goes down and car shortages may develop for the handling of other commodities. Peak loadings cause congestion in our yards and on the line of road. A sort of domino effect results.

Just as peak transportation demand is not confined to one commodity, it also is not confined to one

geographic area. Grain on Southern tends to peak in a few states at a time. The harvest begins in the South and gradually moves northward. However, distant parts of the railroad are adversely affected by surges as cars, locomotives, and cabooses must be diverted from many areas to meet the demand. This can cause service deterioration throughout the system.

Another problem caused by peak demand is the destabilizing effect upon railroad employment. Extra crews for peak demand periods are difficult to hire. The work involved requires expensive and lengthy training, so we cannot hire casual labor for seasonal work. Yet it is unduly expensive to maintain forces in off-peak seasons which will be adequate to meet the peaks that occur in season. Thus any rate change which serves to level demand for rail service will also help stabilize rail employment.

Cars, locomotives, and cabooses can be looked at in the same way. Rolling equipment is expensive, and it cannot sit idle a good part of the year only to be used in a peak season.

Likewise supervision is taxed during peak movement seasons. We can't hire part-time supervisors.

The customer, too, suffers in peak shipping seasons. The inevitable result of heavy seasonal movements is bunching of cars. This causes problems for consignees in unloading the cars rapidly, and the productivity of the car fleet deteriorates.

In summary, Southern finds it difficult to effectively plan and efficiently control the operation of its

system where that system is affected by seasonal surges of traffic. Grain is the commodity with the greatest surges. To the extent that shippers can be encouraged to level their shipments throughout the year, the operation of the railroad system will become more efficient, for the benefit of all shippers. I am strongly in favor of any rate change which will encourage such a year-round leveling of grain traffic.

R. A. Wharton

VERIFICATION

COUNTY OF FULTON:
ss.
CITY OF ATLANTA:

R. A. Wharton, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated.

Subscribed and sworn to before me this 12th day of August 1977.

Notary Public,
My commission expires

TABLE I
Daily Surplus Grain Cars
Southern Railway

Date	Surplus	Date	Surplus	Date	Surplus
8-11-75	585	9-17-75	267	12-18-75	409
12	683	18	221	19	286
13	628	19	221	22	275
14	697	22	202	23	267
15	615	23	209	24	215
18	703	24	233	26	213
19	640	25	239	29	563
20	468	26	252	30	464
21	457	29	244	31	519
22	385	30	91	1- 2-76	464
25	387	11-24-75	105	5	279
26	385	25	168	6	324
27	373	26	134	7	258
28	356	28	155	8	167
29	382	12- 1-75	170	9	180
9- 2-75	474	2	247	12	227
3	411	3	235	13	293
4	421	4	217	14	257
5	326	5	258	15	111
8	326	8	508	16	158
9	546	9	434	19	239
10	578	10	479	20	180
11	430	11	397	21	176
12	493	12	408	22	190
15	252	15	403	23	63
16	250	16	474	26	299
17	267	17	414	27	225
1-28-76	186	3-11-76	345	5-12-76	454
29	143	12	363	13	388
30	157	15	262	14	379

Date	Surplus	Date	Surplus	Date	Surplus
2-2-76	298	16	284	17	440
3	289	17	212	18	423
4	389	18	228	19	384
5	310	4-6-76	389	20	380
6	258	7	320	21	393
9	293	8	314	24	375
10	329	9	256	25	431
11	293	12	260	26	361
12	272	13	254	27	250
13	237	14	212	28	218
17	362	15	192	6-1-76	193
18	359	19	224	2	208
19	236	21	195	3	216
20	179	22	187	4	231
23	340	23	149	7	240
24	231	26	212	8	191
25	182	27	212	10	130
26	142	28	219	11	130
27	126	29	191	14	130
3-1-76	188	30	305	15	130
2	149	5-3-76	500	16	194
3	70	4	497	17	187
4	70	5	402	18	153
5	262	6	463	21	163
8	402	7	486	22	166
9	380	10	592	23	170
10	332	11	498	24	175
6-25-76	180	8-6-76	324	1-4-77	228
28	237	9	254	5	246
29	266	10	188	6	199
30	236	11	172	7	120

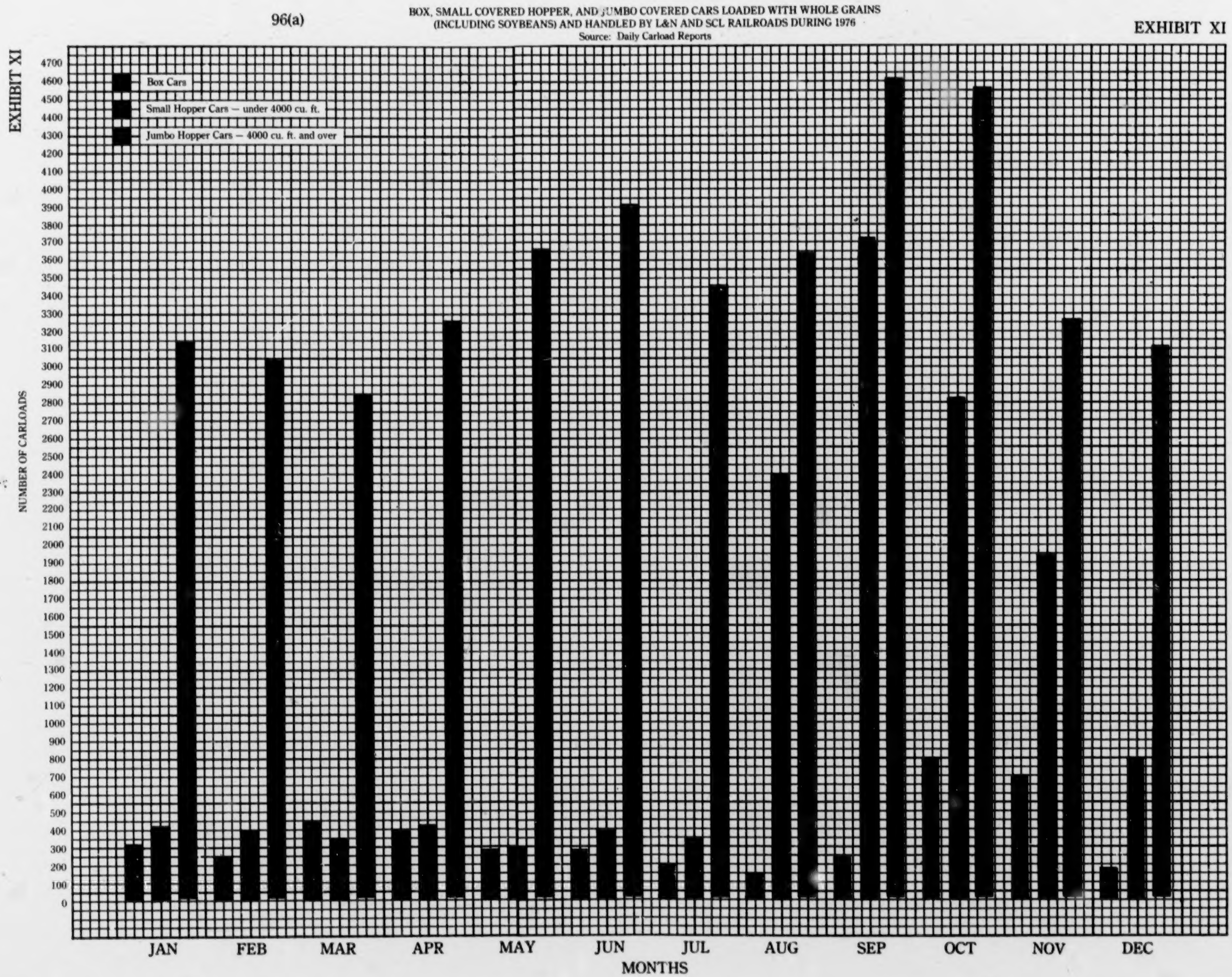
Date	Surplus	Date	Surplus	Date	Surplus
7-1-76	176	12	155	10	220
6	244	16	50	11	225
7	184	17	50	12	147
8	208	18	50	13	220
9	228	19	120	14	229
12	155	20	112	17	263
13	225	11-29-76	491	18	98
14	258	30	545	19	84
15	275	12-1-76	579	20	28
16	165	2	554	21	55
19	184	3	534	24	15
20	203	7	589	25	0
21	191	8	517	26	36
22	182	9	436	5-31-77	289
23	184	10	539	6-1-77	175
26	217	13	707	2	205
27	254	14	639	3	160
28	217	16	586	6	180
29	248	17	584	7	233
30	247	20	591	8	276
8-2-76	315	21	517	9	209
3	269	22	503	10	209
4	304	23	587	13	278
5	335	1-3-77	400	14	283

TABLE II
Average Daily Supply
Railroad-Owned LO Covered Hoppers
Southern Railway System
(From CS-44 Reports)

Week Ending	Cars in Excess of Orders	Unfilled Orders	Week Ending	Cars in Excess of Orders	Unfilled Orders
7-30-77			12-25-76	636	
23		14	18	652	
16			11	645	
9			11-27-76		
2		15	20		31
6-25-77		20	13		205
18		22	6		215
11		16	10-30-76		216
4		10	23		385
5-21-77		14	16		408
14			9		400
7		16	2		363
4-30-77			9-25-76		380
23		19	18		233
16		19	11		184
9		17	4		188
2		22	8-28-76		98
3-26-77		19	21		
19	139	43	14	201	
12	139	49	7	416	
5	118	126	7-31-76	471	
2-26-77	120	188	24		
19	226	157	16	630	
12	310	245	10	853	
5	414	125	3	908	
1-29-77	526		6-26-76	625	
22	461		19	601	
15	439		5	657	
8	569		5-29-76	406	
1	605		22	394	

96(a)

EXHIBIT XI



ICC - 2

Letter - Notifying Commission of Corrections to SFA Justification Statement

Aug. 15, '77

SEABOARD COAST LINE RAILROAD COMPANY
(Letterhead)

August 15, 1977

Mr. H. J. Homme, Jr.
Acting Secretary
Interstate Commerce Commission
Washington, D. C. 20423

Corrections to Justification Statement Filed Concurrently with Supplement Nos. 201, 137 and 23 to SFTB Tariff Nos. 988-8, ICC S-909, 908-B, ICC S-999 and 972-F, ICC S-1359, Respectively, Joint and Local All-Rail Rates, Also Distance Rates on Grain, Carloads.

Dear Mr. Homme:

There is submitted with the tariff supplements above-captioned and the justification statement pursuant to 49 CFR Sec. 1109.10(F) a transmittal letter from the Southern Freight Tariff Bureau. This communication is submitted solely as a vehicle to point out to the Commission several typographical errors that were not corrected. The changes which will be made in the statement as a result of the corrections do not change substantially the content of the submission and are submitted only in the interest of a clear record.

The corrections to be made are as follows:

Page & Line No.	As Is	As Corrected
Page 14, Line 7	"Be considered the objective of the rates."	"Be considered the *only* objective of rates."

Page 15, Line 18	Exhibit VII	Exhibit VIII
Page 16, Line 2	"Restructured"	"Restricted"
Page 19, Line 3-4	"Prepresented"	"Represented"

A copy of this correction page has been included in each of the packets sent to shipper representatives who attended hearings on seasonal rate proposals on grain at the Southern Freight Association Building in Atlanta, Georgia. These are the same individuals who are specified in the Certificate of Service attached to the primary filing.

Very truly yours,

/s/ Wandaleen Poynter
Wandaleen Poynter

ICC - 19

Verified Complaint, Protest and Petition for Suspension and Investigation of Southern Poultry & Egg Association

Sept. 6, '77

BEFORE THE
INTERSTATE COMMERCE COMMISSION

PROTEST,
PETITION FOR SUSPENSION,
AND COMPLAINT

EFFECTIVE DATE:	September 15, 1977
TARIFF REFERENCE:	Supplement 137 to SFTB 908-B (I.C.C. S-999) Supplement 23 to SFTB 972-F (I.C.C. S-1359) Supplement 201 to SFTB 988-A (I.C.C. S-909)
SUBJECT:	Demand-Sensitive rate pursuant to 49 C.F.R. §1109.10, consisting of a 20 percent increase in rates on grain in railroad-owned cars September 15, 1977, through December 15, 1977
WITHIN:	Southern Freight Association Territory and certain points in Indiana and Illinois
PROTESTANTS:	Alabama Poultry Industry Association P.O. Box 1010 Cullman, Alabama 35055

PROTESTANTS (cont'd):	Florida State Poultry Federation 5415 Mariner Street, Suite 105 Tampa, Florida 33609
	Georgia Freight Bureau 34 Peachtree Street, Suite 2434 Atlanta, Georgia 30303
	Georgia Poultry Federation, Inc. P.O. Box 763 Gainesville, Georgia 30501
	National Egg Company 3169 Holcomb Bridge Road Bridge 117 Norcross, Georgia 30071
	North Carolina Poultry Federation P.O. Box 2431 Raleigh, North Carolina 27600
	Poultry and Egg Institute of America 521 East 63rd Street Kansas City, Missouri 64110

PROTESTANTS (cont'd):	Southern Poultry and Egg Association 1456 Church Street Decatur, Georgia 30030
	Virginia Poultry Federation P.O. Box 1036 Harrisonburg, Virginia 22801
ATTORNEYS FOR PROTESTANTS:	David C. Todd Michael A. Floyd PATTON, BOGGS & BLOW 1200 17th Street, N.W. Washington, D.C. 20036
	Telephone: (202) 223-4040
DUE DATE:	September 6, 1977
FILED:	September 6, 1977

PROTEST, PETITION FOR SUSPENSION, AND COMPLAINT OF THE ALABAMA POULTRY INDUSTRY ASSOCIATION, THE FLORIDA STATE POULTRY FEDERATION, THE GEORGIA FREIGHT BUREAU, THE GEORGIA POULTRY FEDERATION, INC., THE NATIONAL EGG COMPANY, THE NORTH CAROLINA POULTRY FEDERATION, THE POULTRY AND EGG INSTITUTE OF AMERICA, THE SOUTH-EASTERN POULTRY AND EGG ASSOCIATION, THE VIRGINIA POULTRY FEDERATION

The above-named organizations (the "Protestants"), pursuant to the Commission's regulations, codified as 49 C.F.R. § 1109.10 after hearing in Ex Parte 324, file this protest, complaint, and petition for suspension of the tariff supplements of the Southern Freight Tariff Bureau (the "Bureau") containing a 20 percent increase on grain movements from September 15, 1977, through December 15, 1977. More specifically, the tariffs protested are those contained in Supplement Nos. 201, 137, and 23 to SFTB Tariff Nos. 988-A (ICC S-909), 908-B (ICC S-999), and 972-F (ICC S-1359), respectively.

Except as mentioned below, the Protestants are associations of broiler, egg, and turkey producers whose feed costs will be increased substantially by the 20 percent rate increase. They are made up of thousands of members and together represent virtually the entire poultry industry of the Southern Territory. The Southern Territory accounts for approximately 70 percent of the nation's broiler production and approximately 50 percent of the nation's egg production.

The Poultry and Egg Institute of America represents the poultry industry nationwide. It joins in this protest on behalf of its members in the Southern Territory and on behalf of all its members in opposing any Commission action on demand-sensitive rates which would be detrimental to the interests of the poultry industry as year-round, level shippers. The Georgia Freight Bureau is an organization composed of 342 shippers and receivers, several of whom have a substantial interest in grain shipments.

A description of the remaining Protestant organizations is found in Exhibit I.

I. Introduction

The Bureau has filed for a 20 percent increase in the rail rates for whole grain and soybeans within the Southern Territory, Indiana and Illinois, for the period of September 15 through December 15, 1977. The rate increases purport to be in accordance with the standards found at 49 C.F.R. § 1109.10 governing the establishment of peak-period demand rates. The justification statement filed by the Southern Freight Association ("SFA") has, however, failed to demonstrate in any way that such standards have been met. Rather, the SFA has contented itself with a presentation which shows only that a peak shipping pattern does exist. The existence of a peak, however, standing alone, is not enough. At the very least, the proponent of a peak demand rate must show that the tariff proposed will or is likely to be effective in alleviating the peak. This, the SFA fails to do.

As discussed more fully below, the facts show that

the tariff increase fails to meet any of the Commission's standards.

In summary:

1. The poultry industry is not responsible for the peak, but rather is an ideal, year-round, level-demand shipper;

2. The poultry industry is incapable of responding to the proposed rate increase;

3. The rate increase would result in a severe loss to the poultry industry;

4. The SFA has neither identified those shippers who are responsible for the peak nor attempted to show that such shippers have the ability "to react positively" to the proposed rates;

5. The rate increase would not be an effective "demand-sensitive" rate for the poultry industry, but would only act as a punitive rate to the unfair, financial disadvantage of the industry and the unfair, financial advantage of the railroads. The increased revenues from the poultry industry would be nothing more than an unjust windfall for the railroads;

6. The SFA has failed to even attempt to determine a coherent strategy to attempt to deal with the peak, but has instead chosen to simply attempt what can only be described as an unjust revenue grab;

7. Any demand-sensitive rates must be structured so that they do not penalize those shippers who are not responsible for the peak, e.g., by providing for offsetting rate reductions during the nonpeak periods.

II. Without suspension, poultry producers will suffer substantial injury.

As is evident, a rate increase of 20 percent represents substantial increased costs for shippers — costs that will be borne by the poultry industry. As stated in the verified statement (attached hereto as Exhibit II) of Dr. Allan Rahn, Assistant Professor at the University of Georgia College of Agriculture, the Georgia poultry industry alone is expected to ship in excess of nine million bushels of corn from outside the state during the September 15 - December 15 three-month period. Thus, as a result of the increases, the Georgia poultry industry would suffer an increase in costs in excess of $360,000.00 for the three months for only the transportation costs of corn. Although the effect on the cost of the corn is the most significant, the proposed increases would result in increased soy meal costs, which is an important feed product for the poultry industry.*

Inasmuch as the impac. of the 20 percent rate increase upon only the Georgia poultry industry's cost of corn exceeds $360,000.00, it becomes apparent that the proposed 20 percent increase will have an adverse impact upon the ability of poultry producers in the Southern Territory to compete with those in the rest of the nation. The cost of the increase to the entire industry in the Southern Territory will be many hundreds of thousands of dollars.

*/ Obviously, higher rates for soybeans will result in higher soy meal prices.

III. Protestants are likely to prevail on the merits.

As hereinafter demonstrated, the protested increase will not further the objectives enumerated by Congress in Sections 101 and 202(d) of the Railroad Revitalization and Regulatory Reform Act (hereinafter "4-R Act")* and does not meet the standards specified by the Commission in Ex Parte 324 and codified as 49 C.F.R. § 1109.10(e). Protestants will demonstrate that the proposed rates are not lawful and may not be imposed.

As set forth at 49 C.F.R. § 1109.10(e), the relevant standards by which the Commission is to be guided in considering proposed seasonal peak-period tariffs are:

> (1) The need to encourage the establishment of demand-sensitive rates and incentives to the shippers;
>
> (2) The need to encourage ratemaking innovation by railroad management;
>
> * * * *
>
> (4) The need to assist the railroads in attaining adequate revenue levels;
>
> (5) The need to improve (i) the utilization of the national supply of freight cars, (ii) the movement of goods by rail, (iii) levels of employment by railroads, and (iv) the financial stability of markets served by the railroads;
>
> (6) The ability of the affected industry within a specific area to react positively to the proposed demand-sensitive rate consistent with statutory goals[.]

*/ Public Law 94-210, February 5, 1976.

The proponent has failed to show that any of these goals or standards, except for the generation of additional, and unneeded, revenues for the railroads, will be served by the proposed peak-period tariff.

IV. The proposed tariff is not likely to achieve the desired goals and may prove counter-productive.

The SFA's graphic presentation of data does indicate a peak-period of grain carloadings.* The demonstration of the phenomenon of peaking, however, is merely a preliminary step to the construction of a seasonal or peak-period rate to achieve the goals of Section 202(d) of the 4-R Act to 49 C.F.R. § 1109.10. As the Commission summarized in its decision in Ex Parte 324,

> . . . The Iowa Department of Transportation (Iowa) contends that in no case should greater demand for transportation during one period in and of itself automatically qualify traffic for demand-sensitive rates. At best, it is argued, such data merely demonstrates what occurred: not necessarily what will occur, nor what caused the fluctuation. Iowa urges that these factors be given no more weight than as an indication of a possible candidate for demand-sensitive rates.

Decision in Ex Parte 324, at 15.

*/ We note, however, that the magnitude of the peak as compared to the "valley" is distorted by the form of the presentation in several instances. This is caused by the use of a baseline substantially in excess of zero carloadings in the graphs appearing at page 3 of the SFA Justification Statement and as Exhibits I(A), I(C), and I(D) thereto.

The SFA has utterly failed to ascertain which shippers or classes of shippers are responsible for the peaking. Moreover, the SFA has failed to show that the proposed tariff will modify the peaking phenomenon. Finally, those deficiencies in the proponent's methodology have resulted in a proposal which will result solely in an unfairly punitive effect upon year-round shippers who, in fact, already provide the ideal traffic patterns which the railroads ostensibly wish to promote with this proposal.

V. The SFA has not shown that the proposed rate is a "demand-sensitive" rate.

The phrase "demand-sensitive rate" is defined, at 49 C.F.R. § 1109.10(b), as "a rate or charge that is proposed for the purpose of influencing seasonal, . . . or peak period demands for rail services." A peak-period surcharge which would not have the effect of influencing peak demand but which, instead, would merely produce a windfall profit for the carrier would not be a demand-sensitive rate. This definition, therefore, implies that in order for a proposal to be considered one for a demand-sensitive rate, its proponent must not only allege that to be its purpose, but demonstrate a reasonable basis for concluding that it will influence demand for rail services. Not only has the SFA failed to so demonstrate in the justification statement submitted in support of the proposal, but there are several reasons why the proposal will not achieve that purpose.

The Commission's decision in Ex Parte 324 clearly indicated that, although the filing of a justification

statement concurrently with the proposed tariff is optional pursuant to 49 C.F.R. § 1109.10(f), "if the rail carriers foresee that the reception of a proposal will be less than favorable, it would be appropriate to include *total* justification with their tariff proposal." Decision in Ex Parte 324, at 27 (emphasis added). Despite that admonition and the SFA's clear anticipation of protests, the SFA's justification statement contains none of the data called for by 49 C.F.R. § 1109.10(j). In fact, the justification statement, for all of its bulk, contains little more than a demonstration that a peak period exists.

The proposal is for a peak rate lasting for three months, promulgated immediately prior to the beginning of the surcharge period. Thus, those feed operations which require a steady flow of feed grains, as is the case with the poultry industry, have no opportunity for advance planning and advance stockpiling. Neither can they merely postpone shipments since they have continuing feed requirements.

The majority of feed grain operations with limited storage capacity have virtually no incentive to expand their storage capacities. The estimated average cost to, for example, Georgia poultry producers of the 20 percent surcharge is four cents per bushel of corn, while the construction cost for storage facilties varies from $1.00 to $2.50 per bushel of capacity, depending on the size and type of facility. Thus, it is unrealistic to expect the proposed peak rate to result in construction of substantial new storage capacity.

Moreover, demand-sensitive rates cannot be instituted in violation of the fundamental requirement

that rates be "just and reasonable." 49 U.S.C. § 1(5). As the Commission observed, "Our policy announcement that we wish to encourage such rates does not and cannot, of course, nullify the Interstate Commerce Act." Decision in Ex Parte 324, at 50. Rates which penalize shippers who are not responsible for the peak which is sought to be corrected are manifestly not just and reasonable and cannot, therefore, be allowed. If the SFA seeks to gain the assistance of those shippers not responsible for the peak in nevertheless reducing the peak they could certainly provide advantageous rates during the nonpeak season. If assurances were given that such rates would be maintained over the long term, such shippers would be in the position of alleviating the peak even though not responsible for it. Surely, however, it is outrageous to impose a punitive rate increase upon innocent shippers which will, in any event, utterly fail to reduce peak demand.

VI. The Georgia poultry industry is not able to react positively to the proposed demand-sensitive rate.

Under the regulations promulgated in Ex Parte 324, the Commission, in considering proposed demand-sensitive tariffs, is to be guided, *inter alia*, by:

> The ability of the affected industry within a specific area to react positively to the proposed demand-sensitive rate consistent with statutory goals[.]

49 C.F.R. § 1109.10(e) (6).

The most simple and immediate positive response would be to alter the timing of shipments. However, as demonstrated by the results of Dr. Rahn's survey, the weighted average* storage capacity of the Georgia poultry industry is 12.45 days. Storage capacity in the remainder of Southern Territory is generally the same or smaller. Although such capacity is adequate to meet the operational needs of this level demand industry, it does not permit more than very minor alterations in the timing of shipments.

When a peak-period rate is proposed, the short-term ability of shippers to reschedule is of paramount importance. The Commission's decision in Ex Parte 324 recognized this:

> However, we stress that the expeditious procedures proposed herein provide for shipper protection by allowing members of the affected industry to protest the publication of a rate under § 15(17). *An important consideration* in deciding whether or not to investigate and / or suspend the proposal *will be the arguments and data relating to the ability of the shippers to adjust their shipment patterns in response to the rate differential.*

Decision in Ex Parte 324, at 23 (emphasis added). When, as in the instant case, a significant class of shippers is incapable of responding, the tariff should be suspended unless the proponent has made an overwhelming showing that the other goals set forth in 49 C.F.R. § 1109.10(e) will be achieved. The SFA has pro-

*/ The weighted average results from a computation which weights each producer's storage capacity by the size of his demand. Thus, the weighted average reflects the industry's total storage capacity compared to its overall demand.

duced no evidence that the proposed tariff is justified, other than the bald assertion that a rate increase during the peak period ought to shift some traffic. The Justification Statement is entirely devoid of any price-elasticity study or other substantiated analysis indicating that a shift would result.*

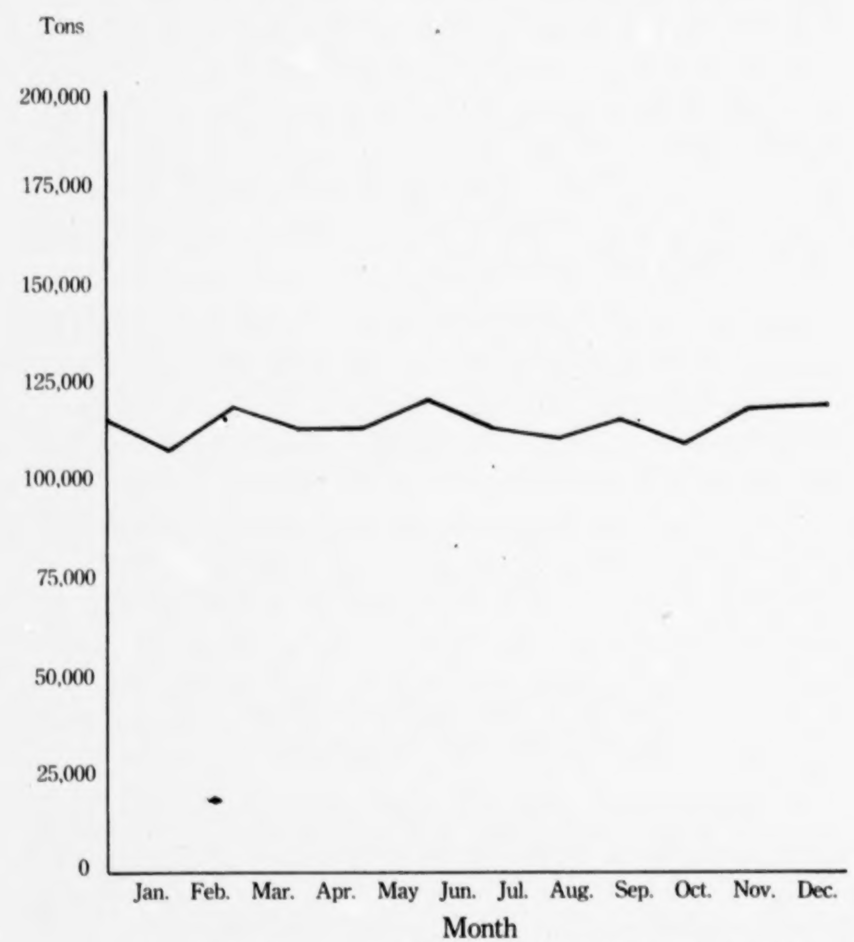
A second form of positive response, although over a longer period of time, would be the construction of additional storage capacity. As discussed above, however, the cost of constructing additional capacity is such that only a long-term guarantee of differential shipping rates would justify the investment.

The most important positive response consistent with statutory goals, however, is the achievement of even, year-round shipment patterns. But, the Georgia poultry industry *has already achieved this goal.* In fact, data compiled by Professor Rahn indicate that: 1) Rail shipments by Georgia poultry producers were relatively evenly spread during 1976; and 2) Insofar as there were month-to-month variations, the fall harvest months of August to November (peak periods for the railroads) were among the lowest shipment

*/ The SFA asserts, in its Justification Statement, "that the more protests filed with this Commission the clearer the indication that the rates proposed will accomplish exactly what they are intended to accomplish." From this, we can infer only that the SFA, being unable to support its assertion that a peak-period rate increase would force the rescheduling of shipments to off-peak periods, hopes to rely in some way on protests by parties who will be harmed by the surcharge to establish that scheduling shifts will occur. That, of course, is not the case. As demonstrated herein, the poultry industry will be subjected to an unjust and unreasonable increase for the very reason that it cannot shift its shipments, the pattern of which already is that which the SFA's proposal seeks to encourage.

months for producers. The graph set forth below is based upon the data compiled by Professor Rahn.

1976 Rail Shipments of Corn by Georgia Poultry Producers



Sources: Survey conducted by Dr. Allan Rahn (Exhibit II)

As demonstrated by the graph, the poultry industry not only is a stabilizing influence on grain shipment patterns in the Southern Territory by virtue of its relatively level shipment patterns, but also such minor peaks as do occur in its shipment volumes generally occur during months which are off-peak periods for the railroads. Thus, the poultry industry tends to level the peaks experienced by the railroads. The Georgia poultry industry, therefore, would appear to be an ideal customer for the railroads: it already is doing what the railroads hope to encourage by the proposed rates. The effect, however, of the proposed rates on these "ideal customers" is extremely adverse, and would unfairly disadvantage them in their ability to compete with poultry producers in other areas of the country.

Despite the beneficial effect of the poultry industry's shipment patterns, the SFA has refused to acknowledge this choosing instead to characterize it as an industry unable "to receive shipments on a less than frantic demand basis." Justification Statement, at 8. Such an allegation is entirely unwarranted and unfair in light of the fact that the poultry industry's shipment patterns are, in actuality, a stabilizing influence.

VII. The SFA has made no effort to identify the causes of peaking.

As demonstrated above, the poultry industry is a stabilizing factor in rail grain shipments. Surprisingly enough, however, the poultry industry was among those singled out for criticism by the railroads. (See Southern Freight Association Justification Statement, at 7.) This anomaly suggests that the railroads have failed to undertake investigations adequate to determine the factors causing peaking and the categories of peak-period shippers.

As discussed above, the shipping patterns of the poultry industry do not match the carloading patterns demonstrated by the railroads. This is because during the harvest months, when local feed grain is plentiful, rail shipments for feeding operations are somewhat lower than during other months.

Protestants, therefore, suggest that the railroads analyze the data available to determine who the peak-period shippers are. If such shippers are found to be those using a specialized tariff, e.g., the Export Grain Tariff, it would be appropriate to limit the peak-period surcharge to the tariff or tariffs under which the peaking actually occurs. In any event, it is incumbent upon the SFA to propose peak-period rates that do not unlawfully penalize those shippers who are not responsible for the peak.

VIII. A peak-period surcharge is unfair to year-round shippers.

One of the major themes developed in Ex Parte 324 was the danger that seasonal or peak rates would be used to subject year-round shippers to increased rates. (See, e.g., Decision in Ex Parte 324, at 24, 48.) In its decision in Ex Parte 324, the Commission emphasized that this would not necessarily be so, since a decrease in off-peak period rates is also possible. (Decision in Ex Parte 324, at 48.)

The instant case is a good example of the concerns raised in Ex Parte 324. The Protestants and, presumably, other major segments of the grain shipping interests in the Southern Territory have even, year-round shipment patterns, yet they would be subject to a general increase under the guise of a peak-period tariff surcharge.

The SFA, in fact, concedes this to be true but argues that it amounts to a mere five percent increase on an annualized basis. (Justification Statement, pp. 6-7.) The SFA then seeks to justify such an increase as being less than the seven percent which would be allowed without suspension under Section 15(8)(c) of the Interstate Commerce Act. (See Southern Freight Association Justification Statement, p. 7.) But such an interpretation finds no support in Section 15(8)(c), which provides that, under certain circumstances, a rate increase (or an aggregate of rate increases) not exceeding seven percent of the rate in effect on January 1, 1977, may not be suspended on the grounds that it exceeds a just and reasonable level. The average over the period of a year of the effect of a peak-period rate* is *not* the same as an aggregate of a series of increases, and Section 202(e)(2) of the 4-R Act [which added Section 15(8)(c)] lends no support to such an interpretation.

The current situation appears to be one in which a reduction in the off-peak period would be appropriate, as suggested by the Commission in Ex Parte 324.

*/ The 20 percent peak-period rate averages to a 5 percent increase *only* for year-round level shippers; it may average substantially more than 7 percent for those shippers who ship proportionally more during the peak period.

(Decision in Ex Parte 324, at 48.) The SFA anticipates this suggestion and counters it only with the general assertion that rates in the Southern Territory are "depressed." In fact, railroads in the Southern Territory enjoy a healthy position as indicated by their expenses to revenues ratios during 1976 and, thus far, 1977, as set forth in the table on the following page.

EXPENSES TO REVENUES RATIOS

Railroad	1976	1st qtr. '77	2nd qtr. '77
I. **Southern Railway System**			
(Consolidated quarterly report as of 1977)		69.3	67.9
Alabama-Great Southern	73.37		
Central Georgia	73.51		
Cincinatti - New Orleans & Texas Pacific	59.43		
Georgia Southern & Florida	65.59		
Norfolk - Southern	74.25		
Southern Railway Co.	74.69		
II. **Family Line Railroads**			
Louisville & Nashville	76.78	78.8	77.6
Seaboard Coast Line	75.38	72.5	73.7
Georgia	77.97	80.0	73.1
III. **Other Major Railroads**			
Florida East Coast	78.93	73.0	68.0
Illinois Central Gulf	79.70	79.9	79.0

Source: I.C.C. Form RE&I, Code 57.

To the same effect, are the glowing press releases announcing second quarter 1977 profits by Southern Railways System and Seaboard Coast Line Industries, Inc., attached hereto as Exhibits III and IV. The Southern Railway Company trumpeted a net consolidated income which was "the highest of any quarter in its history". Likewise, its railway operating revenues for the second quarter and the first half of 1977 "both were records for any quarter or six-month period." Exhibit III, at 1. In the face of such earning reports it would be unconscionable to approve of the imposition of peak rates which are not cost-based in the absence of any reason to believe that such rates would serve to alleviate the peak. By definition, such rates would not be just and reasonable.

IX. Summary

The SFA's justification statement has demonstrated that there is a peak period in the rail shipment of grain, but it does little more than that. Based upon that alone, the Bureau has filed for 20 percent increases in the rates for grain shipments during the September 15 through December 15, 1977, period.

Such an increase will substantially harm the poultry industry in the Southern Territory and have a severe adverse impact on its competitive position compared to poultry producers in other areas of the nation.

The SFA has failed to ascertain which class or classes of shippers are responsible for the peak in grain shipments or that the proposed 20 percent increase will alleviate the peak.

The poultry industry is incapable of responding to the proposed peak-period tariff by rescheduling shipments. Although the industry has storage capacities sufficient for its operational needs, the capital investment required for the additional massive storage capacities required for substantial rescheduling of shipments could not be justified.

The present pattern of grain shipment by the poultry industry is characterized by year-round level volumes. Thus, the poultry industry already is an "ideal shipper" from the standpoint of the railroads. The poultry industry, in fact, is already doing exactly what the railroads are seeking to encourage with the proposed peak-period rates.

Under these circumstances, the effect on the poultry industry of the proposed peak-period rates would be solely punitive and would result in a windfall profit to the railroads.

The intent of the 4-R Act was to level out peaks and valleys in the demand for rail services. This proceeding demonstrates the necessity of careful planning (absent in this instance) in the construction of demand-sensitive rates in order that they have the desired effect without harming year-round shippers, i.e., those whose shipment patterns the rates are ostensibly intended to encourage.

Protestants therefore request that the effectiveness of the aforementioned supplements be suspended and an investigation into the lawfulness thereof be instituted.

Respectfully submitted,

David C. Todd

David C. Todd

Michael A. Floyd

Michael A. Floyd

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Attorneys for Protestants:

Dated:
September 6, 1977

Alabama Poultry Industry Association
Florida State Poultry Federation
Georgia Freight Bureau
Georgia Poultry Federation, Inc.
National Egg Company
North Carolina Poultry Federation
Poultry and Egg Institute of America
Southeastern Poultry and Egg Association
Virginia Poultry Federation

EXHIBIT I

Additional Organizations Participating in this Protest

The Alabama Poultry Industry Association is a trade association composed of approximately 2,500 members who, in the aggregate, account for more than 90 percent of the state's broiler production and 80 percent of the state's egg production. The state produces annually approximately 400 million broilers. Poultry production accounts for approximately 37 percent of Alabama's farm income, an amount equal to approximately $528 million.

The Florida State Poultry Federation is a trade association composed of approximately 350 members, representing approximately 90 percent of the state's poultry industry. The state's 12.3 million laying hens and production of 60 million broilers produce approximately $180 million in annual farm income.

The Georgia Poultry Federation is a trade association composed of several thousand members who, in the aggregate, account for virtually all of the poultry production in the State of Georgia. The state's average *daily* production is 5,100,000 pounds of chicken, 13,850,000 eggs, and 60,000 pounds of turkey. Georgia has been the foremost poultry producing state in the nation since 1957, currently accounting for approximately 20 percent of the nation's chicken production and 8 percent of its egg production. Poultry production has been the largest segment of Georgia agriculture since 1955; in 1976 poultry represented approximately one-third of Georgia's total farm income.

The National Egg Company is an egg marketing cooperative whose 1,300 members in 15 southern states account, in the aggregate, for 45 percent of the egg production in the United States.

The North Carolina Poultry Federation is the trade association of the poultry industry in North Carolina, an industry which consists of approximately 12 million laying hens and annual production of 316 million broilers and 16.5 million turkeys.

The Southeastern Poultry and Egg Association is a trade association composed of more than 5,000 members in the states affected by the Bureau's proposal who, in the aggregate, account for approximately 70 percent of the nation's broiler production and approximately 50 percent of the nation's egg production.

The Virginia Poultry Federation is a trade association composed of approximately 940 members who, in the aggregate, account for virtually all of the poultry production in Virginia. The state's 1976 production consisted of 88.9 million broilers representing $75.7 million in farm income, 7.3 million turkeys representing $38.7 million in farm income and 66.6 million dozen eggs representing $46.5 million in farm income.

EXHIBIT II

VERIFIED STATEMENT OF ALLAN RAHN

My name is Allan Rahn. My address is Department of Poultry Science, Livestock-Poultry Building, the University of Georgia College of Agriculture, Athens, Georgia 30602. I have held the position of Assistant Professor in the Department of Poultry Science since September, 1972. In that position, I teach a course in poultry firm organization and management principles and conduct research focusing on developing analytical aids useful for decision-making for poultry firm managers.

Prior to accepting that position I was an Extension Economist, Iowa State University, from 1967 to 1972, and my duties were to provide research support for added substance and depth to Extension program activities in livestock marketing and price analysis.

I received my Ph.D. degree in Economics in 1973 from Iowa State University, where my field of concentration was agricultural marketing. I received my Bachelor's degree in 1965 and my Master's degree in 1967 from Southern Illinois University, both in agricultural industries.

1. Based on records available to me and my general knowledge of poultry production in Georgia, I estimate that a 20% increase in the cost of interstate corn shipments by rail will cost Georgia poultry producers approximately 4.0¢ per bushel, resulting in a total additional cost to the Georgia poultry industry of 363 thousand dollars in 1977. This estimate was arrived at as set forth in Appendix A hereto; "Estimate of the Financial Impact on the Poultry Industry in Georgia of the Rail Rate Increase Proposed by the Southern Freight Association (Emergency Proposal 179) during 1977".

2. I have conducted a survey of the members of the Georgia Poultry Federation regarding *inter alia*, the sources and modes of shipment of grain received by them and capacities of their grain storage facilities. A tabulation representing approximately 75 percent of the total Georgia poultry industry is attached hereto as Appendix B. I am satisfied that the patterns indicated in the tabulations are representative of the industry as a whole.

VERIFICATION

STATE OF GEORGIA)
) SS
COUNTY OF CLARKE)

Allan Rahn, being duly sworn, deposes and says that he has read the foregoing statement and knows the contents thereof, and that the same are true as stated.

Signed: Allan P. Rahn
Allan Rahn

Subscribed and sworn to before me this 31st day of August, 1977.

Vivian G. Patten
Notary Public

SEAL

My commission expires: 10/8/77.

Appendix A

Estimate of the Financial Impact on the Poultry Industry in Georgia of the Rail Rate Increase Proposed by the Southern Freight Association (Emergency Proposal 179) during 1977

Duration of proposed 20% increase, September 15 - December 15, or 92 days

Chicken inventory estimates — average number on inventory during 92 day period in 1977
Commercial egg layers — 20,612,000, up 3% from similar 1976 period
Hatching egg layers — 3,884,500, no change from similar 1976 period
Other chickens — 10,288,530 assumed to be equal to 42% of all layers

Broiler slaughter estimates — Number to be raised during 92-day period in 1977
Broilers — 110,124,000 up 5% from similar 1976-77 period

Feed consumption estimates:
- Commercial egg layers — 20,612,000 @ .22 lbs/hen/day for 92 days => 208,564 tons
- Hatching egg layers — 3,884,500 @ .32 lbs / hen / day for 92 days => 57,180 tons
- Other chickens — 10,288,530 @ .13 lbs / bird / day for 92 days => 61,525 tons
- Broilers — 110,124,000 @ 3.81 lb/liveweight @ 2.0 feed conversion => 419,572 tons

Feed composition assumptions

Feed	Corn (lbs/ton)	49% Soybean meal (lbs/ton)
Broiler ration	1200	500
Layer ration	1300	400
Other chicken ration	1500	300

Corn and soybean meal utilization estimates

	Corn equivalents	49% Soybean meal
Broilers	251,743 tons	104,893 tons
Layers	172,734 tons	53,149 tons
Other chickens	46,144 tons	9,229 tons
Totals	470,621 tons	167,271 tons
or	16,807,893 bu.	

Estimated cost of production increases with 20% rail rate increase

Corn: Assuming 60% of corn utilized during this 92-day period is imported into Georgia and that 90% of this movement is by rail, then (16,807,893 x .6 x .9) 9,076,262 bu. of corn would be involved. The 20% rate increase would increase the cost of imported corn by at least 4.0¢ / bu. Thus, the estimated poultry cost of production increase from corn would be 9,076,262 x .04 = $363,050.

Soybean meal: It is difficult to deduce the impact that Emergency Proposal 179 will have on soybean meal costs since it is not specified in the Proposal. In terms of crushing capacity, Georgia has a soybean production surplus and this would tend to reduce the prices received by Georgia farmers for soybeans by the 20% rail rate increase. However, soybeans moved by rail within the State would incur higher transportation costs. The impact of these factors on soybean crushing costs or soybean meal and oil production costs and the resulting soybean meal prices paid for formulation in poultry feeds is questionable.

APPENDIX E

1976 GRAIN AND SOYBEAN MEAL MOVEMENT AND USE

TOTALS

COMMODITY & MONTH	1976 RECEIPTS (TONS)	ORIGIN: OUT-OF STATE	ORIGIN: GEORGIA	TRANSPORTATION MODE: RAIL	TRANSPORTATION MODE: OTHER	USED FOR: POULTRY FEEDS	USED FOR: LIVESTOCK FEEDS
CORN (TONS):							
JAN.	129873.00	109107.25	20765.75	113964.04	15908.96	117692.88	11546.27
FEB.	124660.00	102431.04	22228.96	107007.30	17652.70	112813.21	11467.39
MAR.	133268.00	112514.52	20753.48	116107.65	17160.35	121243.05	11460.50
APR.	125333.00	107796.40	17536.60	111847.00	13486.00	112899.55	12029.95
MAY	126248.00	108794.46	17453.54	112316.40	13931.60	113316.94	12429.46
JUNE	130756.00	115095.72	15660.28	118658.32	12097.68	119056.54	11241.96
JULY	124177.00	106779.59	17397.41	110908.60	13268.40	112233.80	11533.05
AUG.	130269.00	80280.89	49988.11	109003.95	21265.05	114759.14	15020.96
SEPT.	143312.00	71678.23	71633.77	113144.87	30167.13	124854.04	18069.41
OCT.	129078.00	67856.53	61221.47	107422.97	21655.03	113696.85	15046.80
NOV.	127102.00	79802.26	47299.72	115157.63	11944.37	114186.95	12342.60
DEC.	129916.00	96591.71	33324.29	115306.34	14609.66	118291.65	11104.85
	1553992.00	1158728.62	395263.38	1350845.07	203146.93	1395044.60	153293.20
OTHER GRAINS (TONS):							
JAN.	3413.00	3133.05	279.95	2933.15	479.85	2999.10	253.95
FEB.	3189.00	2922.90	266.10	2750.70	438.30	2749.80	293.10
MAR.	3531.00	3245.50	285.50	3034.50	496.50	3099.00	266.50
APR.	2784.00	2534.55	249.45	2395.65	388.35	2450.10	204.45
MAY	4027.00	3676.10	350.90	3454.30	572.70	3596.20	239.90
JUNE	3672.00	3339.30	332.70	3153.90	518.10	3268.60	230.70
JULY	3572.00	3244.30	327.70	3068.90	503.10	3178.60	225.70
AUG.	4491.00	4117.25	373.75	3849.75	641.25	4007.50	269.75
SEPT.	4105.00	3188.15	916.85	3349.93	755.07	3744.90	210.05
OCT.	4335.00	3825.84	655.16	3818.40	516.60	3917.60	245.20
NOV.	4367.00	4129.60	381.40	3801.50	565.50	3918.00	260.50
DEC.	4736.00	4560.40	319.60	4137.20	598.80	4264.80	271.60
	46222.00	41916.94	4739.06	39747.88	6474.12	41194.20	2971.40
SOYBEAN MEAL (TONS):							
JAN.	43799.00	21991.66	21807.34	30458.71	13340.29	40248.80	3436.00
FEB.	38577.00	19263.05	19313.95	27022.95	11554.05	35482.75	3005.85
MAR.	42740.00	21660.42	21079.58	28865.09	13874.91	39535.40	3092.70
APR.	39305.00	21123.80	18181.30	27397.90	11907.10	36081.75	3133.40
MAY	39172.00	17978.88	21193.12	26922.90	12249.10	36055.70	3011.95
JUNE	40870.00	18966.11	21903.89	29293.07	11576.93	37872.95	2921.35
JULY	38347.00	20503.23	17843.77	27388.75	10958.25	35259.05	3006.50
AUG.	36955.00	18083.64	18871.36	25877.48	11077.52	33919.55	2943.95
SEPT.	37488.00	18510.10	13977.90	25898.99	11589.01	34440.70	2972.40
OCT.	37307.00	18309.90	18997.10	25689.36	11617.64	34173.85	2992.10
NOV.	35384.00	17914.24	17469.76	24562.61	10821.39	32409.55	2884.70
DEC.	39040.00	19707.26	18332.74	26969.39	12070.61	35832.75	3078.65
	468984.00	234012.29	234971.71	326347.20	142636.80	431310.80	36479.55

AVERAGE NUMBER OF DAYS STORAGE SPACE FOR CORN IN 1976 WAS 12.45 OPERATING DAYS

EXHIBIT III

SOUTHERN RAILWAY SYSTEM NEWS
(Letterhead)

FOR IMMEDIATE RELEASE

NEW YORK, N.Y., JULY 26, 1977 — Southern Railway Company today reported net consolidated income of $37,-744,000 in the second quarter, the highest of any quarter in its history, and an increase of $15,631,000, or 70.7 per cent, over the corresponding period of 1976. Earnings were equal to $2.51 per share of common stock, as compared with $1.45 per share in the 1976 quarter.

L. Stanley Crane, Southern's president, said earnings exceeded by $7,753,000, or by 25.9 per cent, the previous quarterly record of $29,991,000 earned in the second quarter of 1974.

Six months' earnings of $65,322,000 increased by $21,-135,000, or 47.8 per cent, over the 1976 period. They were also a record for any six months' period, exceeding the previous record, in the first half of 1974, by $15,824,000, or 32 per cent.

Total railway operating revenues, of $302,466,000 in the quarter, and $568,353,000 in the half, rose by $41,581,000, or 15.9 per cent, and $61,765,000, or 12.2 per cent, respectively, and both were records for any quarter or six-month period.

Railway operating expenses in the quarter totaled $205,-348,000, up by $15,779,000, or 8.3 per cent, from the 1976 quarter; in the half, $389,622,000, an increase of $25,149,-000, or 6.9 per cent. The higher expenses in the second quarter were attributed partly to an acceleration of maintenance

of way work to help make up for scheduled work not performed in the first quarter due to severe winter weather. Maintenance of way expenses in the second quarter increased by 38.7 per cent over the first quarter of 1977 and by 10.8 per cent over the corresponding period of 1976.

Southern's president credited mainly a strong second-quarter recovery in carloadings for the gains both in revenue and earnings. Citing revenue increases in all 12 of the leading commodity groups, he said gains in the second quarter ranged from 3.5 per cent for waste and scrap material to 34.4 per cent for stone, clay, glass and concrete products. Other substantial increases were in coal, up 25.8 per cent; petroleum and coal products, up 27.7 per cent; primary metal products, up 24.3 per cent; and chemicals and allied products, up 18 per cent. Revenue from "piggyback" loadings of trailers and containers in the second quarter increased by 20.2 per cent over the 1976 period.

While expressing satisfaction with results thus far in the year, Crane said the future is clouded by projections of some slowing in the level of economic growth in the second half. Adding to the uncertainty, he said, is the threat of work stoppages, especially in coal mining, which accounts for about 10 per cent of Southern's total revenues and an even higher percentage for much of the railroad industry. "A prolonged shutdown of the mines would diminish the otherwise bright prospects in store for Southern and for much of the rail industry this year," he declared.

Southern's board of directors declared the regular quarterly dividend of 65¢ per share on the common stock, payable September 15, 1977, to stockholders of record on August 15, 1977. Dividends due and payable on both the preferred and serial preference stocks were declared and publicly announced on January 25, 1977.

Southern Railway Company
and Consolidated Subsidiaries

STATEMENT OF INCOME
SECOND QUARTER OF 1977 AND 1976

(Thousands of Dollars)

	1977	1976	Better Amount	(Worse) %
Railway operating revenues:				
Freight	$294,966	$254,593	$40,373	15.9
Passenger	1,623	1,356	267	19.7
Switching	1,704	1,559	145	9.3
Demurrage	2,997	2,328	669	28.7
Other	1,176	1,049	127	12.1
	302,466	260,885	41,581	15.9
Other income	6,834	5,853	981	16.8
Total income	309,300	266,738	42,562	16.0
Railway operating expenses:				
Maintenance of way	53,070	47,879	(5,191)	(10.8)
Maintenance of equipment	47,541	43,906	(3,635)	(8.3)
Transportation	87,521	81,532	(5,989)	(7.3)
Other	17,216	16,252	(964)	(5.9)
	205,348	189,569	(15,779)	(8.3)
State and local taxes, principally property	6,643	6,535	(108)	(1.7)
Payroll taxes	15,913	13,876	(2,037)	(14.7)
Net freight car rent (income) based on time and mileage	(3,521)	(2,601)	920	35.4
Other equipment rent expense	12,601	10,289	(2,312)	(22.5)
Joint facility rent expense	296	248	(48)	(19.4)
Miscellaneous deductions	1,338	1,334	(4)	(0.3)
Fixed charges	15,446	13,295	(2,151)	(16.2)
Total expenses	254,064	232,545	(21,519)	(9.3)
Income before income taxes	55,236	34,193	21,043	61.5
Federal and state income taxes:				
Current	11,241	7,011	(4,230)	(60.3)
Deferred	6,251	5,069	(1,182)	(23.3)
Total income taxes	17,492	12,080	(5,412)	(44.8)
NET CONSOLIDATED INCOME	$ 37,744	$ 22,113	$ 15,631	70.7
Earnings per common share	$2.51	$1.45	$1.06	
Ratios (expenses to revenues):				
Maintenance of way	17.5%	18.4%	0.9%	
Maintenance of equipment	15.7	16.8	1.1	
Transportation	28.9	31.3	2.4	
Other	5.8	6.2	0.4	
Operating	67.9%	72.7%	4.8%	
Property depreciation and retirements	$ 18,501	$ 16,973	($ 1,528)	(9.0)

Accounting Department
July 19, 1977

Southern Railway Company
and Consolidated Subsidiaries

STATEMENT OF INCOME
FIRST SIX MONTHS OF 1977 AND 1976

(Thousands of Dollars)

	1977	1976	Better Amount	(Worse) %
Railway operating revenues:				
Freight	$553,952	$494,810	$59,142	12.0
Passenger	2,653	2,394	259	10.8
Switching	3,174	3,010	164	5.4
Demurrage	6,569	4,485	2,084	46.5
Other	2,005	1,889	116	6.1
	568,353	506,588	61,765	12.2
Other income	12,726	10,212	2,514	24.6
Total income	581,079	516,800	64,279	12.4
Railway operating expenses:				
Maintenance of way	91,332	88,433	(2,899)	(3.3)
Maintenance of equipment	92,064	84,321	(7,743)	(9.2)
Transportation	172,168	159,688	(12,480)	(7.8)
Other	34,058	32,031	(2,027)	(6.3)
	389,622	364,473	(25,149)	(6.9)
State and local taxes, principally property	13,389	13,082	(307)	(2.3)
Payroll taxes	30,618	27,357	(3,261)	(11.9)
Net freight car rent (income) based on time and mileage	(7,235)	(5,458)	1,777	32.6
Other equipment rent expense	24,217	19,099	(5,118)	(26.8)
Joint facility rent expense	676	560	(116)	(20.7)
Miscellaneous deductions	3,127	3,017	(110)	(3.6)
Fixed charges	30,603	26,441	(4,162)	(15.7)
Total expenses	485,017	448,571	(36,446)	(8.1)
Income before income taxes	96,062	68,229	27,833	40.8
Federal and state income taxes:				
Current	17,589	13,394	(4,195)	(31.3)
Deferred	13,151	10,648	(2,503)	(23.5)
Total income taxes	30,740	24,042	(6,698)	(27.9)
NET CONSOLIDATED INCOME	$ 65,322	$ 44,187	$ 21,135	47.8
Earnings per common share	$4.33	$2.90	$1.43	
Ratios (expenses to revenues):				
Maintenance of way	16.1%	17.5%	1.4%	
Maintenance of equipment	16.2	16.6	0.4	
Transportation	30.3	31.5	1.2	
Other	6.0	6.3	0.3	
Operating	68.6%	71.9%	3.3%	
Property depreciation and retirements	$ 35,981	$ 33,445	($ 2,536)	(7.6)

Accounting Department
July 19, 1977

Southern Railway Company
and Consolidated Subsidiaries

BALANCE SHEET

(Thousands of Dollars)

EXHIBIT III, P. 5

	June 30, 1977	June 30, 1976
ASSETS		
Current assets:		
Cash and marketable securities	$ 212,373	$ 106,357
Accounts receivable	176,666	156,270
Materials, supplies and other	79,704	68,653
	468,743	331,280
Investments in and advances to affiliates	10,046	8,978
Other assets	34,619	28,226
Properties less accumulated depreciation	1,889,383	1,805,951
	$2,402,791	$2,174,435
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Accounts payable and accrued expenses	$ 247,201	$ 214,882
Income taxes	20,594	18,752
Current maturities of long-term debt	79,409	62,465
	347,204	296,099
Long-term debt	723,278	648,688
Reserve for income taxes	10,759	10,759
Deferred income taxes	299,318	273,565
Reserves and other liabilities	28,703	22,795
	1,409,262	1,251,906
Shareholders equity:		
Preferred stock, $10 par value	55,126	57,747
Preference stock, $50 stated value	18,618	18,729
Common stock, $10 stated value	146,337	145,705
Capital Surplus	25,891	21,969
Income retained in the business	747,557	678,379
	993,529	922,529
	$2,402,791	$2,174,435

Note: Certain prior data have been changed for comparability.

Accounting Department
July 21, 1977

EXHIBIT IV

SEABOARD COAST LINE INDUSTRIES, INC. NEWS

(Letterhead)

July 21, 1977

IMMEDIATE RELEASE

Consolidated net income of Seaboard Coast Line Industries, Inc., for the second quarter of 1977 rose to $28,461,-000, compared to $26,661,000 for the same period last year, Prime F. Osborn, president and chief executive officer, announced today.

This amounted to $.95 per share of common stock outstanding, compared to $1.84 per share for the second quarter of 1976.

For the first six months of 1977, net income was $48,-510,000, compared to $46,669,000 for the first half of last year. This was $3.33 per share, compared to $3.21 per share for the first half of 1976.

Total operating revenues for the second quarter of 1977 increased to $441,264,000, compared to $398,595,000 for the same period last year. For the first six months of 1977, total operating revenues were $852,002,000, compared to $769,741,000 for the same period last year.

There were marked increases in almost all categories of traffic during the first six months of 1977, Osborn said. Even construction materials are moving in greater volume, he said, for the first time since the economic downturn which began in late 1974.

Coal continues to move in tremendous quantity, Osborn

said. "We originated a record number of carloads in June," he said, "and tonnage loaded at mines on our system rose by 7.7 percent during the second quarter over the same period last year."

For the first half of 1977, piggyback trailers transported were up 14.5 percent, fertilizer and phosphate up 12.2 percent, and automobiles up 10.6 percent, he said.

SEABOARD COAST LINE INDUSTRIES, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEET
(Thousands of Dollars)

ASSETS

	June 30, 1977	June 30, 1976*
Current Assets		
Cash and temporary cash investments	$ 73,724	$ 91,118
Accounts receivable	229,663	207,660
Material and supplies, at average cost	78,614	72,138
Other current assets	23,331	24,762
Total current assets	405,332	395,678
Special Funds and Investments		
Special funds	6,292	10,603
Investments		
Equity in certain 20% or more owned unconsolidated companies	20,482	17,650
Other, at cost (net of reserve for decline in value—June 30, 1977 and 1976, $4,599)	52,655	52,904
Total special funds and investments	79,429	81,157
Properties	2,885,204	2,765,689
Less accumulated depreciation, amortization and depletion	576,794	549,497
Properties—net	2,308,410	2,216,192
Other Assets and Deferred Charges	48,343	44,892
Total Assets	$ 2,841,514	$ 2,737,919

LIABILITIES AND SHAREHOLDERS' EQUITY

	June 30, 1977	June 30, 1976*
Current Liabilities		
Accounts and wages payable	$ 228,781	$ 196,202
Interest and dividends payable	20,732	20,674
Federal income and other taxes accrued	34,857	41,006
Long-term debt due within one year	86,302	83,284
Other current liabilities	43,120	35,832
Total current liabilities	413,792	376,998
Long-Term Debt Due After One Year	1,003,161	1,004,919
Casualty and Other Reserves	23,586	25,062
Other Liabilities and Deferred Credits		
Deferred income taxes	140,788	138,707
Accruals for prior years' Federal income taxes and interest	38,988	33,531
Other	56,197	53,605
Total other liabilities and deferred credits	235,973	225,843
Equity of Minority Shareholders in Subsidiaries	2,116	2,061
Shareholders' Equity		
Common stock, $20 par value	291,512	291,065
Capital surplus	164,815	164,542
Retained income	706,559	647,429
Total shareholders' equity	1,162,886	1,103,066
Total Liabilities and Shareholders' Equity	$ 2,841,514	$ 2,737,919

*Certain amounts have been reclassified for comparative purposes.

EXHIBIT IV, p. 4

SEABOARD COAST LINE INDUSTRIES, INC. AND SUBSIDIARIES
STATEMENT OF CHANGES IN CONSOLIDATED SHAREHOLDERS' EQUITY
SIX MONTHS ENDED JUNE 30, 1977

	Common Stock Issued and Outstanding		Capital	Retained	Total Stockholders'
	Shares	Amount	Surplus	Income	Equity
		(Thousand of Dollars)			
Balance January 1, 1977	14,560,504	$291,210	$164,619	$672,616	$1,128,445
Net income for the six months ended June 30, 1977				48,510	48,510
Cash dividends declared $1.00 per share				(14,567)	(14,567)
Other:					
Shares issued pursuant to stock option plan	7,909	158	81		239
Shares issued pursuant to dividend reinvestment and stock purchase plan	7,184	144	115		259
Balance June 30, 1977	14,575,597	$291,512	$164,815	$706,559	$1,162,886

SEABOARD COAST LINE INDUSTRIES, INC. AND SUBSIDIARIES
CONSOLIDATED INCOME DATA

(Thousands of Dollars)

	Quarter Ended June 30,		Six Months Ended June 30,	
	1977	1976	1977	1976
Transportation revenues	$425,402	$382,785	$821,448	$739,625
Revenues from non-transportation operations	15,862	15,810	30,554	30,116
Total operating revenues	441,264	398,595	852,002	769,741
Transportation expenses	383,572	332,492	742,715	651,091
Non-transportation expenses	9,544	11,560	18,913	22,011
Total operating expenses	393,116	344,052	761,628	673,102
Income from operations	48,148	54,543	90,374	96,639
Income before income taxes and minority interest	28,590	34,721	48,815	59,812 *
Income taxes (Federal and State):				
Currently payable	386	5,351	749	7,867
Deferred (credit)	(303)	2,666	(534)	5,191
Net Income	$ 28,461	$ 26,661	$ 48,510	$ 46,669 *
Net income per share (based on weighted average number of shares outstanding)	$1.95	$1.84	$3.33	$3.21
Transportation operating ratio	73.6	71.6	73.6	72.6

* Income before income taxes and minority interest includes $2,592,000 and net income (net of income tax effect) includes $2,164,000 gain from distribution in liquidation of Richmond Terminal Railway Company.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the foregoing protest, petition for suspension and complaint and all exhibits thereto upon Montague C. Steele, Tariff Publishing Officer, 151 Ellis Street, N. E., Atlanta, Georgia 30303, all participating railroads, and all known interested parties, by first class mail, postage prepaid.

Michael A Floyd

Washington, D. C. Michael A. Floyd
6 September 1977

ICC - 22

Verified Complaint, Protest and Petition for Suspension of Board of Trade of the City of Chicago, St. Louis Grain Corporation, FS Services, Inc., Illinois Farm Bureau, Illinois Grain Corporation

Sept. 6, '77

Before the

INTERSTATE COMMERCE COMMISSION

VERIFIED COMPLAINT UNDER
SECTION 15(8)(d) OF THE ACT,
PROTEST AND PETITION FOR SUSPENSION

EFFECTIVE DATE:	September 15, 1977
TARIFF REFERENCE:	Supplement No. 201, to SFTB Tariff No. 988-A, ICC S-909; Supplement No. 137 to SFTB Tariff No. 908-B, ICC S-999; Supplement No. 23 to SFTB No. 972-F, ICC S-1395; Item No. 1.40 of all three Supplements.
SUBJECT:	Demand-Sensitive Rates on Whole Grains and Soybeans
TERRITORY:	Within Southern Freight Association Territory, including certain Official Territory points in Illinois and Indiana.

PROTESTANTS:

BOARD OF TRADE OF THE CITY OF CHICAGO	FS SERVICES, INC. ILLINOIS FARM BUREAU

Frank E. Polom
Executive Director
of Transportation
141 West Jackson
Boulevard
Chicago, Illinois 60604

ILLINOIS GRAIN CORPORATION
Robert L. Graves
Director of Traffic
1701 Towanda Avenue
Bloomington, Illinois
61701

ST. LOUIS GRAIN CORPORATION
Clemens A. Poelker, Jr.
Traffic Commissioner
Merchants Exchange
5100 Oakland Avenue
St. Louis, Missiouri 63110

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Twenty North Wacker
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Attorneys for Protestants

BELNAP, McCARTHY,
SPENCER, SWEENEY
& HARKAWAY

Of Counsel

Due Date: September 6, 1977

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*/ Collect telephone advice to counsel of disposition of this petition for suspension is respectfully requested.

Before the

INTERSTATE COMMERCE COMMISSION

VERIFIED COMPLAINT UNDER SECTION 15(8)(d) OF THE ACT, PROTEST AND PETITION FOR SUSPENSION

FOREWARD

This is the first "demand-sensitive" rate publication under the new section 15(17) of the Act — a matter of great importance to the railroads, the shippers and the Commission.

What must be kept in mind in ruling on this first proposal is that the general policy of the new statute encouraging the publication of such rates does *not*, in itself, justify such rates. *The right to protest is not abridged.* Ex Parte No. 324, *Standards and Expeditious Procedures for Establishing Railroad Rates Based on Seasonal, Regional or Peak Period Demand for Rail Service*, ____ I.C.C. ____, report and order, served February 4, 1977, sheets 23, 27, 32A, 43, 47 and 50.

The crucial questions are whether or not such rates satisfy the standards of 49 CFR §§1109.10(e) and, if so, whether or not such rates are just and reasonable and otherwise lawful under the Act.

Thus, an order suspending the proposed rates should not be viewed as a determination contrary to the spirit of the new statute. Instead, such disposition would merely mean that the particular demand-

sensitive rates fail to satisfy the governing standards or would result in violations of the Act, or both.

SUMMARY OF PROTEST

The railroads have *market dominance* over the service to which the proposed rates apply. That is implicit in the railroads' acknowledgement that during the relevant time frame they handle all of the available traffic which they are in a position to handle.

Protestants will suffer *substantial injury* of an irreparable character if the proposed rates are not suspended. The staggering proposed rate increase on grain comes at a time when the prices which farmers are getting for their corn are extremely depressed. Furthermore, large volumes of business would be lost by protestants' members who ship in railroad-owned cars to shippers who ship in shipper-furnished cars because the latter would not be required to pay the increased rates.

There is a *strong likelihood that protestants will prevail on the merits* in an investigation of the proposed rates. Those rates are unjustified and would be inconsistent in critical respects with the governing standards for demand-sensitive rates, 49 CFR §§1109.10(e)(5)(iv) and (6). Moreover, such rates would be unjust and unreasonable, unjustly discriminatory and unduly preferential and prejudicial in violation of sections 1(6), 2 and 3(1) of the Act. Furthermore, such rates would result in unauthorized departures from the long-and-short haul clause of section 4 of the Act.

I.

IDENTITY AND INTEREST OF PROTESTANTS[1]

The Board of Trade of the City of Chicago (CBT) is a corporation created by an act of the Illinois legislature. For more than 129 years, CBT has maintained a commodity exchange where its members meet daily to buy and sell grain, grain products, and non-agricultural commodities. Among the members of CBT are grain merchandisers, cash grain merchants, processors, millers, exporters, and farmers who maintain facilities for shipping grain and grain products by rail in interstate commerce. Freight rates and charges play a most important role in the marketing of those commodities.

FS Services, Inc. (FS) is a Delaware corporation operating as a agricultural cooperative. FS is a manufacturing, purchasing, supply and service organization composed of approximately 150 member companies located in Illinois, Iowa and Wisconsin. The member companies of FS are locally-owned agricultural cooperatives which make substantial shipments of agricultural commodities and farm-related raw materials by rail in interstate commerce.

1/ The facts in this pleading are verified by Mr. Frank E. Polom, Executive Director of Transportation, Board of Trade of the City of Chicago, and Mr. Rogers P. Freedlund, Traffic Analyst, FS Services, Inc. In addition, verified statements of Messrs. Jordan Hollander, Jack Rose and Richard L. Johnson, members of the Board of Trade of the City of Chicago, on the subject of substantial injury, are attached hereto as Appendices No. 1, 2 and 3.

Illinois Farm Bureau (IFB) is a state-wide organization of farmers and farm interests which acts in behalf of Illinois farmers on all matters of mutual concern.

Illinois Grain Corporation (IGC) is a Delaware corporation operating as an agricultural cooperative for the mutual benefit of its members, all of whom are agricultural cooperatives. IGC is a grain merchandiser, buying, selling and shipping approximately 200 million bushels of grain annually.

St. Louis Grain Corporation (StLGC) is a regional agricultural cooperative engaged in the merchandising and marketing of grain for its farmer members.

These five protestants share concern over the adverse effect which the proposed increased rates would have on farmers and grain shippers if such rates were permitted to take effect.

II.

THE EXISTING RAIL RATE STRUCTURE ON GRAIN TO THE SOUTH

Rates on grain[2] within Southern Territory and from Illinois and Indiana to the South are published in three basic tariffs.

SFTB Tariff 908-B contains the single-car rates. SFTB Tariff 972-F, the incentive grain tariff, contains three-car rates on which most domestic shipments of grain move. SFTB 988-A contains the export rates.

2/ As used herein, the term "grain" includes whole grains and soybeans.

Appendix 4 attached hereto is a rate statement which shows the three-car rates on corn, soybeans and wheat from Chicago to L&N destinations in the South. Column 2 of Appendix 4 shows the present rates at the X-336 level. Such rates are applicable in either shipper-furnished or railroad-furnished covered hopper cars, the only difference being that L&N will pay a mileage allowance when shipper-furnished cars are used.

Appendix 5 attached hereto is a rate statement which shows the three-car rates on corn, soybeans and wheat from Milwaukee Road origins in Illinois to the South, which apply in connection with the Southern Railway System. Colunms 2, 5, 8 and 11 of Appendix 5 show the rates in effect from representative origins as of this writing. However, the railroads have published a five percent increase in such rates, to be effective September 14, 1977, to correspond to the general rate increase authorized in Ex Parte No. 313 which such railroads did not apply. Columns 3, 6, 9 and 12 of Appendix 5 show the corresponding rates which will be in effect on September 14, 1977. Such rates are applicable in either shipper-furnished or railroad-furnished covered hopper cars.

In L&N Freight Tariff 6042, ICC A-17096, to be effective September 15, 1977, the L&N has published substantially reduced rates on whole grains and soybeans in shipper-furnished cars of no more than 65-car units from specified stations in Illinois and Indiana to Mobile, Ala., New Orleans, La., and Pascagoula, Miss., for export.

III.

THE PROPOSED RATES

Under the protested proposal, rates in railroad-furnished cars would be increased by 20 percent between September 15 and December 15 of this year, but rates in shipper-furnished cars would remain the same. The railroads propose to implement the increase by means of conversion tables carried in the supplements here protested.

Column 2 of Appendix 4 and Columns 4, 7, 10 and 13 of Appendix 5 show the rates in railroad-furnished cars which would result. The appendices also reflect the very substantial rate differences between shipments in railroad-furnished cars and shipments in shipper-furnished cars which would result from implementation of the proposed increases. From Chicago to Waycross, Ga., for example, shippers using railroad-furnished cars would pay \$2.84 per ton more than shippers using shipper-furnished cars, a difference of \$766.80 per three-car shipment. (App. 4) The spread from Brock, Ill. to Macon, Ga., to show another example, would be \$2.015 per ton, or \$544.05 per three-car shipment. (App. 5)

IV.

PURPORTED JUSTIFICATION

The railroads have issued a justification statement pursuant to 49 CFR §§1109.10(f) which purportedly justifies the proposed rates (hereinafter abbreviated JS).

Not one word was said in that statement, however, explaining or purporting to justify the publication of the increase to apply to shipments in railroad-furnished cars, but not to shipments in shipper-furnished cars.

The railroads contend (JS, P. 2) that a principal justification for the proposed demand-sensitive rates is the "peak-period" or seasonality of grain shipments in the South. *There was no breakdown, however, between export shipments and domestic shipments, or between shipments in railroad-furnished cars and shipments in shipper-furnished cars, in order to determine whether or not one or more categories of such shipments was any more responsible than others for such peak-period or seasonality.* Some evidence in the railroads' statement indicates that export shipments are the principal cause of the peak-period (i.e., VS Jones, p. 4, emphasis added):

> The delay of grain cars at unloading points during peak grain seasons is most prevalent. It is not uncommon for such facilities to delay cars as long as 30 days. *This is particularly true at port facilities where embargoes preventing the movement of grain to such facilities are commonplace . . .*

In any event, the railroads advance the following convoluted logic in anticipation of protests in that respect (JS, pp. 6-7):

> . . . (T)he increase will not be unfair to the shippers who now ship on a year-round basis. First, because it results in only a five percent increase when projected to a yearly basis and secondly because a shipper can refrain from shipping dur-

> ing the demand period and suffer no increase at all. Further, a five percent increase is below the seven percent increase that the Southern Territory railroads could publish under the provisions of Section 15(8)(c) of the Interstate Commerce Act.

The railroads acknowledge (JS, p. 7) that achievement of the desired result is "critical to a justification of a seasonal rate." That desired result is said to be "the leveling of the peak movements over additional months" (*ibid*). Then, in another example of mysterious logic, the railroads state (JS, p. 8):

> . . . In the opinion of the rail carriers party to these SFA proposals, the seasonal rates are not so excessive as to result in severe economic harm to shippers not in a position to respond to the incentive as intended.* The 35 per cent seasonal rate increase which Chairman O'Neal suggests is substantially above the increases which are now on file.

V.

HISTORICAL PATTERN OF GRAIN SHIPMENTS OF THESE PROTESTANTS TO THE SOUTH

As indicated earlier, both IGC and StLGC ship large volumes of corn to the Southern poultry-raising (broiler) market. Historically, such shipments have *not* been concentrated in the peak-period said by the railroads to exist. That is illustrated by the chart below showing 1976 calendar year shipments by IGC and StLGC to the South and shipments during the identified "peak-period" (Sept. 15 - Dec. 15):

(figures in carloads)

	Total 1976 Shipments	Peak-Period Shipments	Percent Peak-Period of Total
IGC	4,039	702	17.4
StLGC	1,200	325	27.1
TOTAL	5,239	1,027	19.6

Thus, for these two major shippers, less than one-fifth of their grain shipments to the South moved during the one-fourth of the year said to constitute the peak period. Our information is that the historical pattern of corn receipts by the Southeastern broiler market corresponds to the shipping pattern of the two major shippers shown above.

While the foregoing evidence may not refute the evidence of the railroads that there is a September 15 - December 15 peak-period for grain shipments in the South, such evidence strongly suggests that the market causing such peak-period is *not* the broiler market supplied under the three-car rates.

VII.

THE EFFECTS OF THE 1977 DROUGHT IN THE SOUTHEAST

Exhibit D to the verified statement of the railroads' Witness Thompson is a statement showing corn, soybean and wheat production in the ten states involved in this proceeding during each year from 1972 to 1976. That statement fails to take into account the effects of the severe 1977 drought in the Southeast.

Set forth below is a chart which shows the actual 1976 corn production of five major Southeastern states and the corresponding 1977 production estimated on August 1, 1977:*

(production figures in 1,000 bushels)

	1976 Production	Est. 1977 Production	Percent Decline
Alabama	49,352	19,385	60.7
Florida	30,240	10,000	66.9
Georgia	133,920	39,000	70.9
North Carolina	150,400	90,100	40.1
South Carolina	46,690	18,810	59.7
TOTAL	407,602	177,295	56.5

Obviously, with Southeastern production having fallen so drastically as a result of the 1977 drought, the Southeastern broiler market**must look toward other areas to supply them with the needed corn. Illinois and Indiana produce 78.5 percent of the corn produced in the 10 states involved in this rate proposal (JS, VS Thompson, Ex. D, p. 1). Thus, it is certain that Illinois and Indiana are going to be required to supply large volumes of corn to the Southeastern broiler market during the 1977 harvest season as result of the drought — regardless of the disincentive to do so caused by the proposed demand-sensitive rates. Stated differently, *the 1977 drought in the Southeast will result in an artificial, non-periodic peak in the demand for corn in the Southeastern broiler market during the corn harvest season which will be unaffected by demand-sensitive rail freight rates.*

*/ Source: Crop production, Annual Summary, Crop Reporting Board, Statistical Reporting Service, U.S. Department of Agriculture, Washington, D.C.

**/ Georgia, the heart of the broiler market in the Southeast, will have a 70 percent reduction in corn production in 1977.

Appendix 6 attached hereto is a copy of an article from a recent issue of THE TRAFFIC WORLD which contains a report of the issuance by the Commission, on August 19, 1977, of Drought Order No. 71, under which reduced rates on hay to 38 Virginia counties were authorized until December 31, 1977 to relieve drought disaster area conditions.

VIII.

GRAIN PRICES

Exhibit E to Mr. Thompson's statement is a comparison of grain prices for each month from January, 1974, to July, 1977. It is apparent on that exhibit how corn prices have drastically fallen in recent months.

Appendix 7 attached hereto is a copy of an article from the September 1, 1977 CHICAGO TRIBUNE which carries a report that the price which farmers receive for corn had dropped to $1.64 per bushel on August 15, 1977. The article also shows that the prices for wheat and soybeans on that date had also dropped substantially from those shown in Mr. Thompson's exhibit.

IX.

MARKET DOMINANCE

The railroads' market dominance over the service to

which the proposed rates apply is not really in issue in this proceeding. The railroads' rate bureau handling of the proposal is indicative of their intramodal market dominance. Intermodal market dominance during the asserted peak-period is implicit in the acknowledgement of the railroads that they are handling all of the involved traffic which they are in a position to handle during such period. If the railroads thought there was effective intermodal competition for the traffic in issue during the peak period, they would hardly chance a 20 percent rate increase on such traffic.

X.

SUBSTANTIAL INJURY

Two major segments of the agricultural community will be substantially and irreparably injured if the proposed rates are not suspended.

Grain merchandisers, such as protestant CBT's members Hollander, Rose and Johnson (See Appendices 1, 2 and 3), as well as IGC and StLGC, who represent the small country elevators and farmers, would lose substantial business to shippers who ship in their own cars because the latter would not have to pay the increased freight charges. Such increased freight charges would be substantial, amounting to \$500-\$750 per three-car shipment in many instances (see Appendices 4 and 5 hereof). At such rate differentials, there would be no way a shipper relying on the railroad for covered hopper cars could effectively compete with a shipper who maintains its own covered hopper cars.

Furthermore, there is evidence that the shippers using their own cars would be in a position to supply a large part of the grain needed by the Southeastern broiler market. AAR Car Service Division, Statement CS-54-A, Report 7630, shows that in 1976 private owners accounted for the ownership of 69,833 covered hopper cars, or 30.7 percent of all covered hopper cars in existence.

The farmer-members of CBT and IFB would also be gravely harmed by the proposed rates. As noted herein, corn prices are severely depressed. Increased rail freight charges on grain mean decreased prices which the farmer receives for his grain, simply because the purchaser cannot afford to pay as much for the grain. The farmers, hard pressed at present due to low farm prices, should not be made to further suffer as a result of the railroads' unlawful "experiment."

XI.

LIKELIHOOD OF PREVAILING ON THE MERITS

A. *The Evidence Shows That The Proposed Rates Are Unjustified and Inconsistent In Critical Respects With The Governing Standards For Demand-Sensitive Rates*

No peak-period of historic seasonal shipments has been identified with respect to the three-car domestic rates to the Southeastern broiler market. The available evidence indicates that shipments and receipts under those rates have not been concentrated in the alleged peak-period. Thus, it appears that the

three-car domestic rate shippers are being burdened with peak-period rates properly shouldered, if at all, by the shippers responsible for the peak period. That is inconsistent with the statutory goals and implementing standards associated with demand-sensitive rates.

Nevertheless, the railroads argue (pp. 6-7) that charging "year-round" shippers peak-period rates is "not unfair" because the increase is "only" five percent on an annualized basis, whereas the railroads could increase such rates by seven percent under section 15(8)(c) of the Act, and because the "year-round" shipper can avoid the increase by refraining from shipping in the peak period.

Why year-round shippers should pay *any* rate increase or be required to refrain from shipping at *any* time under a demand-sensitive rate theory geared at peak-period shippers is never explained by the railroads. That is because there is no explanation for such illogic.

Furthermore, the railroads' comparative reference to the "yo-yo" provision of section 15(8)(c) adds nothing to their argument. Rates are not properly considered under that provision if the railroad has market dominance over the service to which the rates apply. Nor does that provision permit the implementation of rate increases which would be unjustly discriminatory or unduly preferential and prejudicial in violation of sections 2 or 3(1) of the Act, or which involve unauthorized Fourth Section departures. There is thus no ground to assume that the railroads could put in a 7-percent increase on grain rates to the South,

and, consequently, are doing protesting shippers a "favor" by increasing their rates by "only" five percent.*

The governing standards for demand-sensitive rates provide, in pertinent part, as follows (49 CFR §§1109.10(e)(5)(iv) and (6))'

> . . . (T)he Commission considering tariffs under this section shall be guided by:
>
> * * *
>
> (5) The need to improve . . . (iv) the financial stability of markets served by the railroads;
>
> (6) the ability of the affected industry within a specific area to react positively to the proposed demand-sensitive rate consistent with statutory goals . . .

The evidence in this case shows that the proposed demand-sensitive rates are inconsistent in critical respects with such standards.

In view of the 1977 drought in the Southeast, it is clear that it is beyond the power of the Southeastern broiler market, and the shippers which supply that market, to "react positively to the proposed demand-sensitive rates." See 49 CFR §§1109.10(e)(6). Due to the drought, the demand for grain in the Southeast will be inelastic in 1977.

*/ Likewise, the railroads' reference to a 35 percent increase "suggested" by Chairman O'Neal to support their contention that a 20 percent increase will not cause "severe economic harm" to shippers unable to avoid the disincentive to ship is highly improper. A general statement of a Commissioner before the Congress taken out of context is not justification for any rate increase. There is no open door by Congress to increase rates by *any* percentage absent *specific* justification therefor.

Insofar as their application to the drought-stricken Southeastern broiler market is concerned, the proposed demand-sensitive rates constitute a pure revenue-producing ploy by the railroads. Those rates would not "improve the financial stability" of that market. See 49 CFR §§1109.10(e)(5)(iv). Just the opposite would be true. The drought has been experienced. The harvest season is upon us. To suggest that the shippers and receivers should have had better "preplanning and scheduling" disregards that the cause of the problem is Mother Nature — an act of God.

Furthermore, the railroads' own actions are inconsistent with their purported justification for the proposed demand-sensitive rates. While the railroads here express the desire to level movements in the South away from the peak September-December period, one of the strongest promoters of the demand-sensitive rates, L&N, has published reduced rates on 65-car movements of grain to commence on September 15 — the very same day on which the demand-sensitive rates are published to take effect! Obviously, the railroads do not view some heavy grain movements in the South during September-December as undesirable and, indeed, are promoting such heavy movements.

For the foregoing reasons, these protestants submit that at least insofar as the proposed increases would be applied to the three-car rates to the Southeastern broiler market, such increases have not been justified under the standards for demand-sensitive rates, and, further, that such increases would be inconsistent in critical respects with such standards.

B. The Evidence Shows That The Proposed Rates Would Violate Sections 1(6), 2, 3(1) and 4 of The Act

Section 1(6) of the Act prohibits unjust and unreasonable practices with respect to railroad rates and charges.

Section 2 of the Act prohibits unjust discrimination in rates between shippers of like kinds of traffic under substantially similar circumstances and conditions.

Section 3(1) of the Act prohibits undue preference and prejudice in any respect whatsoever.

Section 4 of the Act prohibits lower rates for longer hauls than for shorter hauls in the same direction and over the same route unless specifically approved by the Commission.

Even though the present rates on grain in the South are the same whether the shipments are made in railroad-furnished or shipper-furnished covered hopper cars, the proposed demand-sensitive rate increases would apply to the former shipments, but not the latter.

The railroads offer no justification whatever for the distinction.

Such an unjustified rate increase for shipments of the same commodity according solely to the ownership of the freight car is an unjust and unreasonable rate practice in violation of section 1(6) of the Act.

Shippers of the same commodity under substantially similar circumstances and conditions would be charged different rates. That would be a violation of section 2 of the Act.

Competing shippers of grain in shipper-furnished cars would be unduly preferred and competing shippers of grain in railroad-furnished cars would be unduly prejudiced in the matter of rates. That would be a violation of section 3(1) of the Act.

The railroads do not consider the proposed rates to be cost-based; "they are purely and simply a matter of incentive." (JS, p. 14) However, to the extent to which the railroads rely on the need for more efficient railroad operations and car utilization during the peak-period (JS, Ex. IX), those considerations do not support a rate differential between shipments of grain in railroad-furnished and shipper-furnished cars. The difference in rate treatment between shipments in railroad-furnished cars and shipments in shipper-furnished cars is unjustified.

Under the proposal here before the Commission, the rate on grain from Metropolis, Illinois to Marks, Mississippi, via Illinois Central Gulf Railroad Company (ICG) would be 602 cents per net ton. From the more distant point of Reevesville, Illinois, on the same ICG route to Marks, the rate to Marks via ICG would be 537½ cents per net ton. That is an unauthorized departure from the long-and-short-haul clause of Section 4 of the Act. We understand that there would be other unauthorized Fourth Section departures if the proposed rates are permitted to take effect, but the time available to us has not permitted us to specifically identify them.

XII.

CONCLUSION

WHEREFORE, for the reasons stated herein, these protestants pray that the Commission suspend the operation of the protested schedules and institute an investigation into the lawfulness thereof.

Respectfully submitted,

/s/ Harold E. Spencer

Thomas F. McFarland,Jr.
20 North Wacker Drive
Chicago, Ill. 60606
312/236-0204

BELNAP, McCARTHY, SPENCER,
SWEENEY & HARKAWAY

Of Counsel

Due Date: September,6, 1977

VERIFICATION

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

Frank E. Polom, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated.

Frank E. Polom

Subscribed and sworn to before me this 2nd day of September, 1977.

Notary Public
My Commission expires:
6/28/78

VERIFICATION

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

ROGERS P. FREEDLUND, being duly sworn, deposes and says that he is Traffic Analyst of FS Services, Inc., that he has been authorized to execute this verification in behalf of FS Services, Inc.; Illinois Farm Bureau; Illinois Grain Corporation; and St. Louis Grain Corporation, and that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated.

ROGERS P. FREEDLUND

SUBSCRIBED AND SWORN to before me this 6th day of September, 1977.

Notary Public

My Commission Expires:
6/28/78

Joint Protest of Board of Trade
of the City of Chicago, et al.
filed September 6, 1977

APPENDIX 1

VERIFIED STATEMENT OF JORDAN A. HOLLANDER

My name is Jordan A. Hollander and I am a Partner in Hollander and Feuerhaken, which is in the cash grain business in Chicago. My address is 3325 Board of Trade, Chicago, Illinois. I am Chairman of the Transportation Committee and serve on the Board of Directors of the Board of Trade of the City of Chicago (CBT).

As cash grain merchants, our function is to obtain the best price for the producers and / or country elevators. This entails seeking out the best market place, whether it be for domestic or export needs. Because of the highly competitive nature of the grain trade, freight rates and charges definitely play a vital role and generally control the movement of grain from a specific producing area to specific areas of consumption. Our firm sells corn that is produced in Indiana and stored in elevators located on the L&N Railroad in the southeast.

The proposed 20 percent increase would have a devastating effect on the business our firm does in the south. No way can I, as a cash grain merchant, overcome a 20 percent increase in the freight rates. The Indiana elevator accounts I serve must depend upon the railroads to furnish the rail equipment to move the

grain. They would be disadvantaged to the extent that the increase applies only in railroad furnished equipment; while those who own or lease hopper cars would not be penalized for an identical movement. In my estimation, this is a classic example of undue discrimination in the worst sense. These Indiana elevator operators would suffer irreparable injury because the 20 percent increase would cut off any hope to reach the markets in the southeast.

I believe that the railroads are taking an unfair advantage of those who are affected by the 1977 drought in the Southeast and who must look to Illinois and Indiana for their corn supply this harvesting period.

VERIFICATION

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

Mr. Jordan A. Hollander being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated.

Jordan A. Hollander

Jordan A. Hollander

Subscribed and sworn to before me this 6th day of September, 1977.

Notary Public
My Commission expires:
6/26/78

APPENDIX 2

VERIFIED STATEMENT OF J. M. ROSE

My name is J. M. Rose, Jr., and my business address is Room 1275 Board of Trade Building, 141 W. Jackson Blvd., Chicago, Illinois, 60604. I am doing business under the name of J. M. Rose as a Cash Grain Merchant and I am a member of the Chicago Board of Trade.

One phase of my business is the purchase of grain in the spot market where individual cars are sought in order to meet the specific needs of accounts from whom I receive buying orders. A number of people for whom I buy on order are small elevators or processors trying rather desperately to compete with some of the giants of the industry. Because of the broad area encompassed by the needs of my customers, I also make purchases of grain in storage from elevators in the Chicago Switching District.

In reaching the markets in the southeast, I make use of the single and multi-car rates published in the Southern Freight Association Tariffs 908-B, I.C.C. S-999 and Freight Tariff 972-F, I.C.C. S-1359. These are the rates that the southern railroads propose to increase by 20 percent during the period September 15, 1977 through December 15, 1977. This is the period when the harvesting of soybeans and corn takes place in Illinois and Indiana and is considered a peak demand period for railroad equipment. The proposed increase is only applicable when railroad furnished equipment is utilized. It will not apply when the shipper furnishes his own equipment. As a small indepen-

dent trader, I am presently at a disadvantage with the large grain companies who have a fleet of hopper cars under lease and in addition receive a mileage allowance from the carriers when such equipment is utilized in the movement of grain into the southeast. If the increase is allowed to go into effect, it would close the door to the southeast market for me. I could not hope to reach the southeast on a rate structure increased by 20 percent and depend upon the railroads for equipment while the firms with the private car fleets would have substantially lower freight rates to the same area.

VERIFICATION

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

Mr. John M. Rose, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated.

John M Rose Jr

John M. Rose

Subscribed and sworn to before me this 6th day of September, 1977.

Carol A. Turner

Notary Public
My Commission expires:
6/26/78

APPENDIX 3

VERIFIED STATEMENT OF RICHARD L. JOHNSON

My name is Richard L. Johnson and my address is 141 West Jackson Boulevard, Chicago, Illinois. I am a Grain Merchandiser for Indiana Farm Bureau Cooperative Association Inc.

We ship substantial amounts of corn from numerous member coop elevators in Indiana to destinations in the Southeast such as Roselawn, Francesville, Rensselaer, Chalmers, Reynolds, Ashgrove, and Lafayette. This originates at elevators which depend upon the railroads to furnish the cars needed to move this grain. These elevator operators, faced with the 20 percent increase in freight rates, will be cut off from the Southeast markets, as they could not possibly absorb the increase proposed by the carriers. These elevator operators use the single and multi-car rates published by the L&N from Indiana origins. Those rates will be subject to the 20 percent increase when the railroad supplies the covered hopper cars. These people compete with those elevator operators who maintain a covered hopper car fleet and who will not be faced with the 20 percent increase. There is no way our coop elevators can compete with such a disparity in the rate structure for an identical movement. The proposed increase would do irreparable harm to those individuals by cutting them off from the Southeast markets and forcing them to find others.

VERIFICATION

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

Mr. Richard L. Johnson being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated.

Richard L. Johnson

Subscribed and sworn to before me this 6th day of September, 1977.

Notary Public
My Commission expires:
6/26/78

APPENDIX 4

COMPARISON OF PRESENT RATES WITH PEAK DEMAND RATES ON CORN, SOYBEANS AND WHEAT FROM CHICAGO, IL TO REPRESENTATIVE SOUTHERN DESTINATIONS, APPLICABLE IN 3 COVERED HOPPER CARS, MINIMUM WEIGHT PER SHIPMENT 270 TONS.

(Rates In Cents Per 2000 Pounds — X-336 Level)

	From Chicago, Ill.	
To SFA Destinations	Rates (X336)	Proposed Rates
(1)	(2)	(3)
Birmingham, AL	980	1176
Decatur, AL	887	1064.5
Guntersville, AL	1071	1285
Montgomery, AL	1084	1301
Atlanta, GA	1066.5	1280
Augusta, GA	1387.5	1665
Calhoun, GA	1044.5	1253.5
Cartersville, GA	1066.5	1280
Gainesville, GA	1122.5	1347
Macon, GA	1168.5	1402
Valdosta, GA	1477.5	1773
Waycross, GA	1421	1705
Chattanooga, TN	922	1106.5
Johnson City, TN	1228	1473.5
Nashville, TN	818.5	982

Columns: (2) — Rates in effect 12-16-77 thru 9-14-78, applicable in *shipper/receiver and/or railroad furnished covered hopper cars.*
(3) — Rates in effect from 9-15-77 thru 12-15-77, applicable only in *railroad furnished covered hopper cars.*

Tariff Auth: T.P.O. M. G. Steel, SFTB 972-F, I.C.C. S-1359.

Joint Protest of Board of Trade
of the City of Chicago, et al.,
filed September 6, 1977

APPENDIX 5

COMPARISON OF DOMESTIC RATES ON CORN AND WHEAT FROM VARIOUS ILLINOIS ORIGINS ON THE MILWAUKEE ROAD TO SOUTHERN DESTINATIONS APPLICABLE IN 3 COVERED HOPPER CARS, ROUTING VIA MILWAUKEE — SOUTHERN RAILROADS

(Rates in Cents Per 2000 Pounds — X-336 Level)

To SFA Destinations	Brock, Ill.			Tallmadge, Ill.			Darrow, Ill.			Cheneyville, Ill.		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
Jacksonville, Fla.	1213	1273.5	1528	1185.5	1245.5	1494.5	1157	1214	1457	1133	1166.5	1400
Atlanta, Ga.	858.5	901	1081	832	873.5	1048	803.5	843.5	1012	778.5	817.5	981
Gainesville, Ga.	914.5	960.5	1152.5	887	931.5	1118	861	905	1086	835	876	1051
Macon, Ga.	960.5	1008.5	1210	934.5	980.5	1176.5	906	951	1141	881.5	925	1110
Charlotte, N. C.	1234.5	1296.5	1556	1206	1266	1519	1174	1233	1479.5	1147	1205.5	1446.5
Raleigh, N. C.	1391.5	1461	1753	1365	1433	1719.5	1330.5	1398	1677.5	1303.5	1368.5	1642
Columbia, S. C.	1256.5	1319	1583	1227	1289	1547	1195	1255.5	1506.5	1169.5	1229	1475
Greenville, S. C.	1160.5	1218.5	1462	1131.5	1187.5	1425	1099	1154	1385	1073.5	1127	1352.5
Chattanooga, Tn.	714	750	900	689.5	724	869	659.5	692	830.5	635	666.5	800
Knoxville, Tn.	800.5	840.5	1008.5	774.5	813.5	976	745	781.5	938	720	755.5	906.5

Columns: 2, 5, 8, 11 — Rates in Effect through 9-13-77, applicable in both shipper/receiver and/or railroad furnished covered hopper cars.
3, 6, 9, 12 — Rates in Effect 9-14-77 and 12-16-77 through 9-14-78 applicable in shipper/receiver furnished covered hopper cars; and in railroad furnished covered hopper cars other than time period specified in Column 4, 7, 10, 13.
4, 7, 10, 13 — Rates in Effect from 9-15-77 through 12-15-77, applicable only in railroad furnished covered hopper cars.

Tariff Auth: T.P.O. M.C. Steel, SFTB 972-F, I.C.C. S-1359.

ICC - 23

Protest and Petition for Suspension and Investigation of Archer Daniels Midland Company, ADM Milling Co., Conagra, Inc., Dixie Portland Flour Mills, Inc., Seaboard Allied Milling Corp.

Sept. 6, '77

Before the

INTERSTATE COMMERCE COMMISSION

Suspension and Fourth Section Board No. 67123
Office Of Proceedings No. 36663

PROTEST AND PETITION FOR SUSPENSION AND INVESTIGATION

Effective Date: September 15, 1977

Protested Items: Supplement Nos. 201, 137 and 23 to SFTB Tariff Nos. 988-A, I.C.C. S-909,908-B, I.C.C. S-999 and 972-F I.C.C. S-1359, Respectively, Joint and Local All-Rail Rates, Also Distance Rates on Grain, Carloads, by Southern Freight Association, Agent

---

ARCHER DANIELS
MIDLAND COMPANY
Decatur, Illinois 62525

ADM MILLING CO.
Overland Park, Kansas
66207

CONAGRA, INC.
Omaha, Nebraska 68131

DIXIE PORTLAND
FLOUR MILLS, INC.
Memphis, Tennessee 38101

SEABOARD ALLIED
MILLING CORP.
Kansas City, Missouri
64141

Protestants

Of Counsel:

CALDWELL & GREENE
900 17th Street, N.W.
Washington, D.C.
20006

By: John H. Caldwell
Peter A. Greene
Neal A. Jackson
900 17th Street, N.W.
Washington, D.C.
20006

Their Attorneys

Due Date: September 6, 1977

Before the

INTERSTATE COMMERCE COMMISSION

Suspension and Fourth Section Board No. 67123
Office Of Proceedings No. 36663

PROTEST AND PETITION FOR SUSPENSION AND INVESTIGATION

Effective Date:	September 15, 1977
Protested Items:	Supplement Nos. 201, 137 and 23 to SFTB Tariff Nos. 988-A, I.C.C. S-909, 908-B, I.C.C. S-999 and 972-F I.C.C. S-1359, Respectively, Joint and Local All-Rail Rates, Also Distance Rates on Grain, Carloads, by Southern Freight Association, Agent

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Preliminary Statement

Come now Archer Daniels Midland Company, ADM Milling Co., ConAgra, Inc., Dixie Portland Flour Mills, Inc., and Seaboard Allied Milling Corp., and submit, pursuant to 49 C.F.R. §§1109.10(g) and 1100.40(g), their protest against and petition for suspension and investigation of tariff schedules, proposing a 20% so-called "seasonal" increase in rail

rates applicable on whole grains and soybeans in railroad owned cars, for the period September 15, 1977, through December 15, 1977, from, to and between points in Southern Territory, including certain points in Illinois and Indiana.

Attached to this protest, and incorporated herein, is a verified complaint containing specific facts which show that without suspension and investigation of the protested tariff schedules, substantial injury will be caused to these protestants and that it is likely protestants will prevail on the merits pursuant to applicable provisions of the Interstate Commerce Act, as amended, including specifically 49 U.S.C. §15(17). The attached verified complaint, identified as Appendix A to this protest, is a joint presentation by John E. Harvey, John R. Staley, Donald J. Stone, James R. Woolery, and Charles H. Wilson, Jr. Also attached to this protest, Appendix B, is a verified statement by Eugene F. Bilz, a leading transportation consultant who has reviewed alleged rail justification claims from the standpoint of operations and costs.

This is the first major rail presentation before the Commission under rules recently adopted in Ex Parte No. 324. As demonstrated in Appendices A and B hereto, the justification presented by the rail carriers for this proposal is meaningless, contradictory, lacking in any reasonable detail, and totally insufficient to meet the statutory criteria of new Section 15(17) and the guidelines established by the Commission for seasonal, regional, or peak period demand rates in its decision in Ex Parte No. 324, served February 4, 1977, as amended by order served July 20, 1977. [49 C.F.R. 1109.10].

Conclusion

Based on this protest and attached verified complaint and verified statement, the Commission should order suspension and investigation as required by the unlawfulness of the proposal, the irreparable harm resulting to protestants therefrom, and the obvious failure of the rail proponents to come forward with adequate justification under prescribed standards.

Dated at Washington, D. C. this 6th day of September, 1977.

Respectfully submitted,
ARCHER DANIELS
MIDLAND COMPANY
Decatur, Illinois 62525

ADM MILLING CO.
Overland Park, Kansas
66207

CONAGRA, INC.
Omaha, Nebraska 68131

DIXIE PORTLAND
FLOUR MILLS, INC.
Memphis, Tennessee 38101

SEABOARD ALLIED
MILLING CORP.
Kansas City, Missouri
64141

Protestants

Of Counsel:

CALDWELL & GREENE
900 17th Street, N.W.
Washington, D.C.
20006

By: John H. Caldwell
Peter A. Greene
Neal A. Jackson
900 17th Street, N.W.
Washington, D.C.
20006

Their Attorneys

Due Date: September 6, 1977

Appendix A

Before the

INTERSTATE COMMERCE COMMISSION

Suspension and Fourth Section Board No. 67123
Office Of Proceedings No. 36663

VERIFIED COMPLAINT OF
JOHN E. HARVEY, JOHN R. STALEY,
DONALD J. STONE, CHARLES H. WILSON
AND JAMES R. WOOLERY

ARCHER DANIELS
MIDLAND COMPANY
Decatur, Illinois 62525

ADM MILLING CO.
Overland Park, Kansas
66207

CONAGRA, INC.
Omaha, Nebraska 68131

DIXIE PORTLAND
FLOUR MILLS, INC.
Memphis, Tennessee 38101

SEABOARD ALLIED
MILLING CORP.
Kansas City, Missouri
64141

Protestants

Of Counsel:	By: John H. Caldwell
	Peter A. Greene
CALDWELL & GREENE	Neal A. Jackson
900 17th Street, N.W.	900 17th Street, N.W.
Washington, D.C.	Washington, D.C.
20006	20006

Their Attorneys

Due Date: September 6, 1977

Before the

INTERSTATE COMMERCE COMMISSION

Suspension and Fourth Section Board No. 67123
Office Of Proceedings No. 36663

VERIFIED COMPLAINT OF
JOHN E. HARVEY, JOHN R. STALEY,
DONALD J. STONE, CHARLES H. WILSON
AND JAMES R. WOOLERY

Come now Archer Daniels Midland Company ("ADM"), ADM Milling Co. ("ADM Milling"), ConAgra, Inc. ("ConAgra"), Dixie Portland Flour Mills, Inc. ("Dixie Portland"), and Seaboard Allied Milling Corp. ("Seaboard") and pursuant to the provisions of Rule 1100.40(a) of the Commission's Rules of Practice [49 C.F.R. 1100.40(a)], submit this their verified complaint in opposition to the proposed penalty rates which are the subject of the above-captioned proceeding. In support of their complaint, protestants state as follows:

I.

Identification And Qualifications Of Affiants

This complaint has been prepared jointly by the following representatives of protestants:

John R. Staley is General Traffic Manager of Seaboard with headquarters in Kansas City, Missouri. He has held the position of General Traffic Manager of Seaboard since 1966, and, in that capacity, is responsible for all transportation needs of Seaboard's domestic operations. He is authorized to submit evidence in this proceeding on behalf of his company.

Donald J. Stone is Director of Transportation for ConAgra, headquartered in Omaha, Nebraska. He has been employed by ConAgra since January, 1970, first as General Traffic Manager and, since November, 1976, as Director of Transportation. Prior to 1970, he was employed for 15 years in various transportation management positions by Colorado Milling and Elevator Company. In his present position as Director of Transportation, he has overall responsibility for securing and supervising all transportation used by ConAgra. He is authorized to submit evidence in this proceeding on behalf of his company.

James R. Woolery is Vice President-Traffic, ADM Milling, with headquarters located in Overland Park, Kansas. He has been employed by ADM Milling in various transportation capacities since January of 1959, and has occupied his present position as Vice President-Traffic since June, 1974. He is directly responsible for ADM Milling's operations involving

transportation and, is authorized to submit evidence in this proceeding on behalf of his company.

John E. Harvey is Director of Corporate Transportation of ADM, headquartered at Decatur, Illinois. He has held that position since 1967, prior to which he held various positions in traffic with ADM, beginning with employment in 1963. From 1946 to 1963 he was employed by Colorado Milling and Elevator Company, a Denver, Colorado based flour milling company in various functions all with direct work in an overview of transportation. His current responsibilities include the overview of all transportation for Archer Daniels Midland Company and its wholly-owned companies.

Charles H. Wilson is Traffic Manager of Dixie Portland and his office is located at Arkansas City, Kansas. He has held his present position since 1972. From 1969 to 1972, he was Assistant Traffic Manager and prior to 1969, he was employed in a traffic management capacity by New Era Milling Company at Arkansas City, Kansas. He is authorized to submit evidence in this proceeding on behalf of his company.

II

Identification And Interests Of Protestants

Protestants ADM, ADM Milling, ConAgra, Dixie Portland, and Seaboard (otherwise collectively identified herein as the protestants) are all processors of grain and grain products with sizeable investments in flour mills, grain elevators, and feed and poultry processing facilities located in Southern Freight Associa-

tion Territory ("SFA Territory"). Each of these protestants will be directly and irreparably injured by the 20% proposed increase in "seasonal" rates. Their grain affected operations encompass flour milling, feed milling,* and integrated poultry production. These activities require inbound rail movement of wheat, corn and soybeans. To a limited extent, some of the protestants also are involved in export of wheat and other grains through Gulf Coast ports. Such exports have a prior inbound movement by rail.

Seaboard operates flour mills and related elevator facilities at Jacksonville, Florida, Chattanooga and Cleveland, Tennessee, and Culpepper, Virgina. These mills receive inbound wheat by rail.

ConAgra is a diversified producer of basic food products, based in Omaha, Nebraska, and operates approximately 70 plants world-wide. ConAgra's major products include bakery and soft wheat flours, formula feeds for poultry and livestock, dry corn and oat mill products, poultry and catfish processing, and grocery products for home baking, horse feeding products, pet food and related accessories. As here pertinent, ConAgra operates a total of 13 grain processing plants within SFA Territory. The facilities comprising ConAgra's Poultry Division in SFA Territory are located at Athens and Enterprise, Alabama and Tunnel Hill, Georgia. ConAgra's Agri-products (Feed) Division has plants located at Augusta, Macon, and Shady Dale, Georgia, Decatur, Alabama, Jacksonville and Tampa, Florida, and Knoxville, Tennessee. Flour mills operated by ConAgra's Grain Milled Products

*/ This includes manufacture, sales and distribution of commercial animal and poultry feed.

(Flour) Division are located at Decatur, Alabama, Macon, Georgia, and Tampa, Florida.

ADM and ADM Milling comprise a multi-plant agribusiness engaged in the handling and processing of grains and oilseeds for product distribution in domestic and world markets. ADM Milling operates a wheat flour mill in SFA Territory at Charlotte, North Carolina, which receives inbound wheat by rail. ADM operates a soybean processing plant at Kershaw, South Carolina, which presently processes approximately 20,000 bushels of soybeans per day. During the period covered by the proposed penalty rate, ADM normally receives all of its required beans by rail. ADM also operates a grain elevator at Memphis, Tennessee, engaged in the merchandising of corn, wheat, soybeans and milo. While this facility draws grain by water and truck, it also receives "Big John" multiple-car rail shipments of inbound soybeans and corn.

Dixie Portland, based in Memphis, Tennessee, operates flour mills in SFA Territory at Chattanooga and Knoxville, Tennessee, and has an additional mill under construction at Barnesville, Georgia, near Atlanta. Dixie Portland's mills receive wheat by rail.

III.

The Proposed 20% Penalty Would Have Severe, Irreparable Impact On These Protestants

It is noteworthy that, even if protestants or other shippers could otherwise adjust the flow of their traffic to avoid the penalty period, the manner in which

proponents have timed the effectiveness of their proposal prevents such action. By waiting until just before September 15 to publish their proposal, the railroads have effectively precluded any reasonable possibility of shippers reacting positively. Obviously, if the railroads had proposed a rational rate legitimately designed to encourage shifting of traffic, they would have published the proposed rates earlier to permit their shippers to plan and achieve necessary adjustments in shipping patterns. However, by waiting until now the railroads have made such positive reaction impossible. Since the ability to "react positively" is one of the principal factors to be considered in evaluating rates of this type [see 49 C.F.R. 1109.10(e)(6)], the fact that the carriers have themselves prevented such positive reaction requires suspension of the effectiveness of the proposed rates. Suspension would allow the Commission to investigate the proposal, with all parties having an opportunity to present evidence on the many complex factors which have a bearing on this problem. If at the end of an expedited investigation, the rates were to be permitted to become effective, (possibly 1978), adequate time would remain to allow shippers to plan and take steps to avoid a prospective rate increase. This would obviously be the most equitable course of action for all concerned.

The operations of these protestants are typical of many grain based facilities throughout SFA Territory. The proposed 20% increase in rates would have direct and irreparable effect upon their operations and would not induce, in the slightest, any incentive for construction of increased storage facilities.*

*/ As will be discussed later, the railroad justification is based

Based on present rail movements to the SFA facilities of these protestants total penalty freight charges approaching one million dollars would be incured and absorbed. See Exhibit 1 hereto. These protestants cannot pass on the 20% increase to their customers in view of intense competition from suppliers not faced with the 20% increase. These protestants cannot spread the impact of the penalty charges over other months of the year because their prices are not based on an advance average freight rate — prices are based on freight rate as of date of sale.

In the operation of mills manufacturing commercial animal and poultry feed, and in the operation of integrated poultry processing facilities, year-round storage capability will not usually exceed a 2 weeks' supply of corn, soybean meal, or other feed ingredients. The capacity of storage at some facilities is as little as a 4 day supply. Each of the southern facilities of these protestants engaged in feed and poultry processing receive an even or steady flow by rail of inbound grain throughout the year, without a seasonal variation in the Fall. Illustrative of this even pattern of shipping is ConAgra's average weekly usage of rail received corn at Southern plants operated by its poultry and feed divisions, shown in Exhibit 2. This movement is not subject to seasonal fluctuations. Therefore, as feed and poultry processors, these protestants are not the source of any unusual or seasonal demand for rail cars in SFA Territory. Moreover, a substantial portion of their inbound ingredients

*(Cont'd)
on an inherently faulty premise in its assumption that equipment utilization problems, if any arise from lack of destination storage.

originate outside the South in either private equipment or equipment owned by foreign lines.

There is also an even flow of inbound rail wheat each month of the year in protestants' operations of their southern-based flour mills. See, for example, Exhibit 3, depicting Seaboard's rail receipts of wheat at Culpepper, Virginia, and Jacksonville, Florida, for 13 four-week periods in 1976. Similarly, ADM's Charlotte mill receives a steady consistent supply of inbound rail wheat year round, averaging between 30 and 40 cars per week without seasonal variations. The same type of even flow is also characteristic of the flour mills operated by ConAgra and Dixie Portland. See, in this regard, Exhibit 4 which shows ConAgra's average carload receipts of wheat used at its mills located at Decatur, Macon, and Tampa.

The proposed increase will directly, irreparably penalize these protestants for shipping and receiving inbound grain via rail in Southern territory not subject to peak or seasonal variations. Beyond this fact, the 20% penalty rate would not induce any consideration whatever by these protestants of possible additions in destination storage capacity. Proponent railroads know this and their "seasonal" increase is designed to disguise a purely windfall revenue measure under new Section 15(17) of the Act.

The cost of building additional concrete storage facilities now approximates $1.50 per bushel (which is about the price of the corn at points of production in the country). Wholly irrespective of freight rates, it would be uneconomical for these protestants to add storage capacity to avoid drawing grain during the

Fall season. The necessity of maintaining low inventory and limiting capital costs is an economic fact of life in our businesses.

If, at prohibitive capital costs, storage were increased at feed and poultry plants in the South, these protestants would also be at a substantial disadvantage in competing with processors located in states such as Arkansas who operate without the resulting cost and rate disadvantages and compete in the same markets for sale and distribution of feed and poultry. Southeastern processors have intense competition for all geographic areas surrounding SFA Territory. Competitors are located at or beyond border points in SFA Territory, such as Memphis, Tennessee, East St. Louis, Illinois, Louisville, Kentucky, and Cincinnati, Ohio, and they would be at a superior competitive advantage in that they would continue to draw inbound rail grain without added capital costs or rate increases.*

Storage capacity for wheat at protestants' flour mills, while greater than that for ingredients at feed and poultry processing facilities, is based on a capital investment designed to meet customer specification for blending a variety of different types and grains of wheat in production of flour. Therefore, storage capability decisions are based on factors, such as grind capacity and blending requirements. Even if

*/ This situation is aggravated by the failure of proponents to include in their carelessly structured proposal key corridors of grain movement into the heart of SFA Territory. For example, Trunkline-Central Territory Freight Tariff No. 401-J, ICC C-557 publishes 1 and 3 car rates from St. Louis and numerous points in Illinois to Louisville, Owensboro, and Henderson, Ky. and Evansville and Mt. Vernon, Indiana which would not be subjected to the proposed 20% penalty.

storage were increased at protestants' southern plants, this would not alter their requirements for steady inbound rail receipts of grain.

Proponents' justification statement betrays a total misunderstanding of the nature of the grain and grain processing industry in their own SFA Territory. Contrary to a basic underlying premise of this proposal, even a vast increase in destination storage by receivers of grain would have no impact on the purported increase in volume of movement during the Fall season. Grain would still be sold and moved to destination facilities as it has historically.* As we elsewhere point out, storage at originating points is very much alive and growing in SFA Territory. In fact, in SFA Territory, it is growing at twice the national rate according to the proponents' own evidence. See Exhibit V to the justification statement. Exhibit 5 hereto also demonstrates an increase of 100% in on-farm storage in SFA between 1974 and 1977.

These protestants will have no opportunity but either to absorb 100% of the penalty increase of almost one million dollars or to search out and scrutinize alternative methods of transportation, including increased use of truck and barge movement, in many cases at higher than present costs where their facilities are served exclusively by rail in the South. For example, ADM's soybean mill at Kershaw, South Carolina, which now receives most of its required receipts of soybeans by rail, is committed to a diversion to all truck movement if the 20% penalty takes

*/ For example, harvest of wheat grown in SFA Territory occurs in June and July and does not create or contribute to any so-called "surge" in grain shipments between September 15 and December 15.

effect. This will result in a loss of all rail revenue now received by Southern Railway on inbound bean movements to this facility, and will result in higher costs to the Southern since it will have to deadhead empty hoppers to Kershaw for outbound movements of soybean meal today carried in hoppers which previously held inbound beans.

At ConAgra's facilities in SFA Territory, within reasonable truck distances of river crossings, Conagra will carefully scrutinize the possible advantages of shifting to barge and truck movement to avoid the penalty charges proposed by respondents. At Conagra's poultry facility at Enterprise, Alabama, corn orginating today in Southern Indiana and Illinois moves inbound all rail via Family Lines. If the penalty increase becomes effective this Fall, ConAgra will examine whether to shift this volume to barge/truck via Decatur or Mobile, diverting approximately 16 rail carloads a week from the Family Lines. Other points where ConAgra will consider shifts from rail to barge include plants at Knoxville, Tampa, and Decatur, all of which can receive grain by water.

IV.

The History Of This Penalty Increase Indicates The Commission Should Suspend And Investigate Since From The Outset This Proposal Was Improvident And Unanimously Opposed By Affected Shippers.

The rail proponents suggest, ironically, that the more vocal and vigorous the protests against its unlawfulness, the sounder and more effective the proposal. (Justification, p. 18). We are confident the Com-

mission will not adopt such inverse reasoning in its application of the legal standards of the Interstate Commerce Act, including new Section 15(17). The unanimity of the opposition to this punitive increase demonstrates that the increase would not accomplish statutory objectives, and would serve only to injure and thoroughly antagonize the shipping public.*

Rail affiant Thompson claims the proposal was "almost identical" to earlier proposals processed in August and December of 1976. (Emergency Proposals 3983 and 33.) What he fails to indicate, however, is that those earlier proposals did not involve a 20% increase and did not include wheat. Emergency Proposals 179 and 180, processed without hearing in June of this year, originally called for a 10% increase, not applicable to wheat, but within one week after the proposal was docketed, it was changed by a 100% increase from 10% to 20%, wheat was added as a commodity, and a hearing was omitted.

Approaching the 1977 Fall season, the railroads "steam-rolled" the proposal through the rate bureau process, without hearing, knowing in advance that the penalty increase could not be publicly justified. Contrary to Mr. Thompson's suggestion, the denial of public hearings on this most recent proposal was not due to any concern as to "redundancy". Rather it was obviously due to the fact that the carriers knew well in advance that shippers were uniformly opposed to the proposal and that it was neither practical nor justifiable.

*/ The Commission's hope for a "new" spirit of cooperation between shippers and carriers, expressed in Ex Parte 324 and cited by the railroads in their justification (p. 5) will certainly be dashed if this proposal is allowed to become effective.

As observed in Chairman O'Neal's statement of July 29 (see Rail Justification, Exhibit VI, p. 3), the carriers "... must make careful studies of the seasonal characteristics of traffic and demand elasticities before they can propose a rate rationally." It is important that the carriers take into effect "... marketing influences which may ... exert greater influence than the incentives offered through this provision." Factors such as these were simply ignored here by the proponents.

Suspension is clearly required since the railroads have utterly failed to perform the necessary study and analysis which might lead to a rational proposal for a "seasonal rate".

V.

The 20% Penalty Rate Will Cause And / Or Result in Violations Of Sections 1(5), 1(6), 1(11), 2, And 3(1) Of The Interstate Commerce Act

We have demonstrated that these protestants do not contribute to any unusual or excessive demand for equipment in SFA Territory, that their shipments are steady year-round and that the only effect on them of the rate proposal would be to impose an unfair penalty on their traffic without any benefits under new Section 15(17) of the Act being derived by the railroads. Where practicable, these protestants will search for use of alternative modes, resulting in detrimental diversion of rail traffic to truck and barge with immediate revenue losses for the proponent carriers.

Shippers such as these protestants are entitled to reasonable rates and charges on traffic moving to

Southern facilities where they have committed substantial investments. As a pure penalty this increase will result in unjust, unreasonable charges. The Commission has traditionally and repeatedly condemned action of the railroads in adjusting rates so as to impede or stifle the movement of commodities in any given direction. See *Montgomery County Exchange* v. *S. A. L. Ry.*, 109 I.C.C. 579, 586 (1926); *Old Ben Coal Corp.* v. *C. C. C. & St. L. Ry.*, 115 I.C.C. 84, 87 (1926); *Wyoming Coal Co.* v. *V. Ry.*, 98 I.C.C. 488, 491 (1925). See also *Virginia Ry.* v. *United States*, 272 U.S. 658 (1926). There is no indication in Section 15(17) of the Act, nor in its legislative history, that Congress intended that the Commission should authorize, or for that matter promote, rate increases punitive in effect which serve only to add revenue for the carriers, without affecting shipping patterns or improving car utilization. See Section 202(f), 4R Act.

The Commission forewarned the railroads that in determining whether or not to suspend or investigate new proposals under Section 15(17), an important consideration in its determination will be "... *the arguments and data relating to the ability of the shippers to adjust their shipment patterns in response to the rate differential.*" Ex Parte No. 324, p. 23. These protestants cannot adjust their shipment patterns to avoid or minimize the severe impact of this rate proposal, with the possible exception only of diverting what is now rail traffic to truck and barge movement to the detriment of the SFA carriers. See 49 C.F.R. 1109.10(e)(6). Moreover, this situation is largely one of the carriers' own making by their unfortunate timing of this ill-conceived proposal.

The proposal will result in serious violations of Section 3(1). These protestants are involved in intense competition in the marketing of bakery flour in the South with mills located in the West and the Midwest, which ship flour under proportional rates into SFA Territory. The proponent railroads participate in those rates used by competitor Western and Midwestern mills in reaching Southern markets for flour. Midwestern and Western millers will not be confronted with any inbound rate disadvantage in drawing wheat for the marketing of flour distributed in the South. Protestants will be faced with a 20% rate disadvantage during the three month penalty period, and will thereby be subjected to undue prejudice, while Midwestern and Western competitors enjoy undue preference under rates in which the SFA Territory railroads participate. Such violations of Section 3(1) are further reason for suspension and investigation. This proposal also would undermine the stability of important markets now served in the South by Rail, and, hence, will be counter-productive to Section 15(17).

Despite the railroads' claim that a "seasonal" increase is necessary to smooth out demand for equipment operated by SFA Territory railroads, substantial movements of grain to processing points in the South originate outside SFA in foreign line cars with inter-territorial movement to SFA points. SFA carriers do not and will not provide their equipment to Western railroads to load grain destined to Southern points. This proposal will not assist Western Territory carriers either in terms of equipment utilization or revenue. In effect, Western carriers will be required

to provide equipment on movements subject to "incentive" rates allegedly designed to improve efficient use of equipment operated by SFA carriers. Southern carriers will be rewarded with a 20% increase in rates while Western railroads continue to provide car supply without improvement in their revenues or car utilization.

To be rational and consistent with the goals of Section 15(17) of the act, the "seasonal" rate would necessarily be limited to shipments only in cars provided by SFA carriers.* Application of the proposal to shipments in foreign line equipment is an unjust, unreasonable practice affecting rates and car supply in violation of Section 1(6) and 1(11) of the Act.

VI.

The Proposal Would Promote Discriminatory, Unlawful Practices By The Carriers In Their Exercise Of Veto Power Over Shipper Use Of Private Equipment Exempt From The 20% Penalty.

Shipments in privately owned equipment are exempt under the proposal. However, it is well known that the Southern Railway follows a practice of requiring that on-line shippers, moving commodities in covered hopper cars, obtain advance special permission (OT-5) before being allowed to tender shipments in private cars. Southern retains the absolute prerogative, 48 hours prior to shipment, to decide whether or not to accept commodities tendered for movement in private equipment. Family Lines also require advance permission for use of private equipment on grain shipments. Because private cars often have to be shifted hundreds of miles, 48 hours notice is totally inadequate. It almost invariably takes longer than that simply to get them moving toward the loading points.

*/ No data was provided demonstrating a problem of "peak" car demands as to carriers outside SFA.

Under this proposal, therefore, the carriers can determine whether or not they will favor a particular shipper with a 20% rate reduction and, hence, engage in discrimination, preference and prejudice of the type the Commission is seeking to police and prohibit in Ex Parte 307.

Retention and use of absolute veto power over use of private equipment, exempt from the 20% penalty, will enable the carriers to discriminate widely between competing shippers. Cars shipped by the same or different shippers loaded with the same commodities in the same train of the same railroad between the same points will move at different rates, subject to the discretion of the carrier to grant or deny use of private equipment exempt from the 20% penalty.

ADM has been advised by Southern Railway that the proposed increase will apply to all points where the rates are not restricted to shipper owned or leased cars only and "... as in the past, we will attempt to grant as much advance notice as possible when this 48 hour restriction will be removed." Southern further advised its intention that such "advance notice" would be given prior to any "appreciable" shortage developing. ADM's letter inquiry as to this practice and Southern's response are attached hereto as Exhibit 6.

It takes little imagination to conceive of the unlawful, discriminatory practices which will be encouraged by a proposal applying a 20% increase to shipments in carrier equipment while exempting any increase, subject to advance clearance by the carriers, on shipments in private equipment.

To penalize shippers with a 20% increase for using carrier equipment while concurrently denying them the unqualified right to use private equipment, without rate penalty, is a manifestly unreasonable practice. This practice is both unfair and wholly counter-productive. Availability and use of private cars contribute substantially to easing overall equipment demands (seasonal or otherwise) facing the railroads.

The Commission must suspend if for no other reason than to protect these protestants from inevitable abuses in selective penalty rate application on shipments tendered in private equipment to Southern carriers this Fall.

VII.

The Justification Submitted By Rail Proponents In Support Of Their Sweeping Proposal Is Totally Deficient And Seriously Misleading

These protestants fully recognize that seasonal demand sensitive rates are an idea whose time has come. Congress has mandated special procedures to facilitate their publication* and the Commission, after

*/ 49 U.S.C. 15(17)

appropriate rulemaking, has promulgated implementing regulations.* Equally clear, however, is that the Commission recognized the potential for misapplication of the concept of demand-sensitive rates. See, for example, the Commission's decision in Ex Parte No. 324, at page 12, where it made the following observations:

> The regulations adopted herein (see Appendix D) retain for the shipper his right of protest under §15(8) of the Act. Accordingly, where the shipper believes that an ostensible "demand-sensitive" rate proposal does not further the Congressional mandate of the 4-R Act [which it should be noted, does not ignore the interests of shippers or abrogate the Commission's suspension and investigation powers under §15(8)], the shipper will have ample opportunity to oppose the rate adjustment under the expeditious procedures adopted herein (and discussed, *infra).*

By this presentation, these protestants are availing themselves of the opportunity that the Commission assured would be available to them for the purpose of demonstrating that the rail proponents have failed to show that their proposal would achieve Congressional objectives embodied in Section 15(17).

The justification submitted by rail proponents is packaged in a way which is intended to create the illusion that: (1) there exists within SFA Territory a serious and widespread seasonal imbalance of traffic; and (2) the instant proposal would be effective in mitigating such imbalance. Neither premise bears up under even cursory examination.

*/ Ex Parte No. 324, 49 C.F.R. 1109.10.

A. Proponents' Improvident Proposal Would Actually Create Rather Than Alleviate Seasonal Fluctuations In Grain Traffic

The fundamental deficiency apparent in proponents' presentation is the fact that they have failed to identify the source of their problem, if indeed a problem actually exists. Having failed to properly identify their alleged problem they have proposed a course of action that would inevitably create one. As explained in Mr. Bilz's statement, the railroads have proposed to penalize all grain traffic, including that moving on a year-round basis at fairly consistent levels. The blanket approach proposed by rail respondents will likely interfere with cyclical movements of other traffic and create traffic surges in grain immediately prior to September 15 and immediately following December 15 as well as a depression between those dates. This is clearly not what was intended by Congress or by the Commission. Yet, because of the proponents' failure to focus on the actual source of their problems and to publish rates that would deal with the source, this is precisely the result that would occur.

B. Although Proponents Suggest That Their Objective Is To Improve Utilization Of Jumbo Covered Hoppers Their Own Data Establish That Such Utilization Is Already Excellent

Typical of the careless and superficial analysis that has led proponents to their faulty conclusions is the chart which appears at page 3 of Mr. Bowers' statement. The chart was obviously submitted with more concern for its dramatic impact than the accuracy or relevance of the information that it depicts. For example, the chart shows as its source AAR statemnt CS-54A. Review of that underlying data indicates that the peak figure shown for September actually includes five weeks rather than four (i.e., weeks ending 9/4, 9/11, 9/18, 9/25 and 10/2). However, such transparent manipulations are of minor significance in comparison to the more susbstantive deficiencies of the proponents' contentions as to car utilization.

Throughout their presentation, respondents suggest that their objective is to even out the utilization of "expensive equipment" which is identified as jumbo covered hopper cars costing some $28,000 per unit (i.e., Thompson, V.S. p. 5; Spuhler V.S., p. 2). The graph on page 3 of Mr. Bowers' statement is obviously intended to suggest radical seasonal variations in the use of jumbo covered hoppers. However, when reference is made to Exhibit XI to respondents' justification, it is apparent that the use of jumbo covered hoppers in grain service is actually quite stable. As explained in the accompanying statement of Mr. Bilz, Exhibit XI shows that the monthly average utilization of such equipment for the movement of grain during 1976 was 3500 cars. During November, a typical month within the period of applicability of the proposed penalty, the number of carloadings was approximately 3250 or about 9% lower than the annual average. This hardly signifies serious imbalance in utilization.

Where the surges actually occur, according to Exhibit XI, is in the utilization of small hopper cars. As proponents well know, those cars belong to Seaboard Coast Line and were acquired for the purpose of moving phosphate fertilizer from Florida. The movement

of fertilizer is counter-cyclical to the movement of grain. Therefore, if proponents presented a complete picture, it would show that the small SCL hoppers are heavily engaged in fertilizer movement during the months when grain movement is at its lowest.

They are undesirable for grain traffic because of their small size which makes it difficult to satisfy minimum weight requirements under "Big John" rate application. They also take up more track space than jumbo hoppers because of the additional space taken up by the greater number of coupling devices per linear distance. They also take longer to unload because more unloading apertures must be opened and closed per given volume of grain. These protestants therefore have no desire to use the smaller cars, and do so rarely. However, SCL apparently seeks any opportunity to press them into grain service, since the alternative would be to have them standing idle.

C. Proponents Improperly Attempt To Evaluate Impact of Grain Taffic On Their Operations In A Vacuum.

The car employment information provided by respondents dramatically illustrates the fallacy of looking at grain car utilization in a vacuum. Such a simplistic approach assumes that when rail proponents are not moving grain they are not moving anything. However, in the real world, proponents carry a great deal of traffic throughout the entire year and that traffic follows a variety of cycles. Diverting grain traffic from the September through December period into other months might actually create serious

problems in the flow of other traffic during those other months. Mr. Bilz explains this effect in his statement. Rail proponents have either failed to take into account flows of other traffic in their planning or they have taken them into account but, upon learning that data will not support their position, have deliberately withheld such information as to *overall* car utilization. Observance of its own recently promulgated standards in Ex Parte No. 324 requires that the Commission not permit the proposed penalty rates to become effective without first finding that the instant proposal is one which could reasonably be expected to level out proponents' operations rather than simply shift grain traffic to periods when proponents are actually less able to handle it. To make such a determination in the face of the data void in proponents' justification would be arbitrary, capricious and without any rational basis.

D. Proponents' Data Fails To Identify The Source Of Their Alleged Seasonal Fluctuations In Grain Taffic

Another major defect in proponents' analysis is the failure to identify by origin and destination the specific points between which peak grain traffic is moving during the penalty period. Without identifying such points, and limiting the application of the proposed penalty rates to traffic moving between those points, the blanket approach taken by proponents would actually create radical interruption or curtailment of traffic between points where there is now an even flow. This is precisely the opposite of the result intended by Congress.

For example, if there is currently a seasonal peak in grain traffic between Cincinnati and Mobile but there is an even flow of grain taffic between Memphis and Jacksonville the proposed penalty rates might even out the flow between the former two points but they would also disrupt the flow between the latter two. That car demand and supply varies widely between different points in SFA Territory is clear from proponents' own data. As illustrated by Table II to the statement of Mr. Wharton, there are times when excesses and shortages of jumbo covered hoppers occur simultaneously. Thus, unless proponents' proposed penalty rates are selectively applied they are at least as likely to aggravate existing excesses as they are to alleviate existing shortages.

It was in obvious recognition of these delicate considerations that the Commission's regulations in Ex Parte No. 324 contemplated in controversial circumstances that rail justifications adequately demonstrate that the proposal involves a reasonable likelihood that the rates will in fact have the results enumerated in Section 15(17). What was envisioned was a precisely targeted plan rather than the thoughtless blunderbuss approach evident in the instant proposal.

E. Proponents' Justification Betrays A Fundamental Misconception Of The Economics Of The Grain Trade

The total inadequacy of proponents' justification in terms of the standards specified in the Commission's regulations (i.e., 49 C.F.R. 1109.10) is apparent throughout their submission. For example, proponents castigate grain receivers in SFA Territory for failure to construct "adequate" storage facilities to accommodate alleged peaks in traffic flow. (e.g., Bowers V.S. pp. 4 and 7). They cite Exhibit V of their presentation as evidence that SFA shippers and receivers have done less than their share in investing in and constructing storage facilities.

To begin with, to compare grain storage capacity in SFA Territory with Midwestern areas which produce many times the amount of grain that is produced in SFA Territory is unrealistic to say the least in view of the fact that more wheat is grown in Kansas alone than in the entire SFA Territory. If storage capacity were, in fact, a valid indication of shipper efforts to alleviate seasonal peaks, a far more meaningful figure would be that of growth in such facilities. In this regard it is significant to note that proponents' Exhibit V shows an increase in storage capacity nationally from January 1, 1975, to January 1, 1976, of about 3%. However, the increase during the same period in those states within SFA Territory was actually 6.1% or twice the national rate. Respondents' own figures refute their premise. Exhibit 5 hereto demonstrates appreciable and growing on and off farm storage facilities in the Southeast.

It is also appropriate to note that these protestants have done more than their share in bearing the equipment burdens that are more properly the obligations of the carriers. For example, these protestants alone operate more than 1600 of their own jumbo covered hopper cars and have another 300 on order.

More fundamental, however, is proponents' failure

to establish any correlation between SFA storage capacity and alleged seasonal peaks in grain shipments. Contary to proponents' assertions, destination storage capacity can have little impact on grain traffic flow. If anything, lack of destination storage creates a requirement for steady flow of grain and feed in order to insure uninterrupted productivity. By increasing storage, millers, poultry processors, and other grain receivers criticized by proponents would actually enhance their ability to take advantage of reduced origin market prices that sometimes occur during peak movement periods. This would encourage rather than reduce unevenness in the flow of grain traffic.

The storage figures relied upon by proponents also lack meaning in their failure to separate grain flowing into the SFA Territory from the Midwest and grain produced in SFA Territory. If movements into the territory from the Midwest were influenced by storage at all, it is origin storage that is relevant. Unfortunately the material furnished by proponents does not permit such an analysis.*

F. Proponents' Proposal Is Grounded Upon Fundamentally Unsound Theories Of Rail Cost Accounting

The proposed rates also rest upon faulty reasoning with respect to cost impact. In their justification statements proponents take the position that the more traffic they handle the more it costs them and that it is more expensive to handle traffic in concen-

*/ We have demonstrated that origin on and off farm storage in the Southeast is substantial and growing. See Exhibit 5.

trated lots than when it is spread out into smaller movements. Such statements are diametrically opposite to well-established principles of carrier cost accounting. Mr. Bilz, a recognized authority on rail costing, revenue, and operations, demonstrates in his verified statement the serious fallacies in the railroads' position. If in fact there were any validity to such novel theories, the entire rail rate structure in this country would be the opposite of what it is with volume rates being premium rates and single car rates being substantially lower. In this regard, it is significant that the L&N, the principal proponent of the instant proposal, continues to publish reduced multiple car rates on grain. For example, as recently as August 26, 1977 the L&N published sharply reduced multiple car grain rates to become effective September 25, 1977. [See L&N Freight Tariff 6043, ICC A-17098]. Those rates are based on costing concepts which are directly counter to their espoused theory in support of this proposal.

Equally absurd is the suggestion that it would be cheaper to switch two cars each month into a rail siding than to make two switches per year consisting of twelve cars each. Protestants could go on and on with a catalogue of such absurdities expressed or implied in the justification but see little point in doing so since it is so obvious from any objective review of the justification statements that they reflect the most fundamental misconceptions of the principles of railroad costing.

G. Contrary To Proponents' Contentions, Grain Rates In SFA Territory Are Not Depressed

Another among the many inappropriate terms used by Mr. Bowers in this statement in the word "depressed" found on page 9 in quotes and asterisked. The asterisk to ICC Docket 35876, *Feed Grains To New England*, for a purported explanation as to how the "Big John" rates in SFTB 972-F Incentive Grain Tariff ICC-S-1359 are depressed.

In all 27 pages of the decision in Docket 35786 (served February 10, 1977) there is no characterization of the "Big John" rates as "depressed." In fact, on page 10 of the decision, it is noted that in 1966 SFA carriers, other than the Southern, "increased certain of their multiple car rates, by inflating the mileages used in the Big John formula by 13 percent."

In addition to the 13 percent increase cited by the Commission, the SFA carriers have taken every ex parte increase applicable since the inception of the Big John rates with the sole exception of Ex Parte 256. This results in nearly doubling the original level of the Big John rates without even considering the inflation of 13 percent by lines other than the Southern Railway. The cumulative increase in these rates has been 51% since 1974, not to mention the new ex parte increase of 5% pending this November. (See Exhibit 7).

Mr. Bowers used the word "depressed" to justify a penalty of a 20 percent increase in rates rather than incentive reduction to remove the alleged seasonal surge of grain. There is no probative evidence in Mr. Bower's statement nor in the public record in the Big John case, *Grain In Multiple Car Shipments, River Crossings To La.*, 325 I.C.C. 752 (1965), 321 I.C.C. 582 (1963), and 318 I.C.C. 641 (1963) that in any way in-

dicates the grain rates in the South are depressed. As the Commission noted in the original case and reasserted in Docket 35876, the rates in the South are not full service rates and involve substantially differing transportation conditions than are found in other regions.

With absolutely no showing of rates of return and concommitant cost evidence, any assertion that grain rates in the South are "depressed" subordinates matters of fact to the obsequiousness of self interest.

H. Proponents' Proposal Would Seriously Harm Small And Large Shippers Alike

Proponents' distorted rationale is also apparent at pages 14 and 15 of the statement of Mr. Bowers where the suggestion is made that the proposed penalty rates will benefit small shippers by freeing up cars for their use during the penalty period. What Mr. Bowers does not appear to recognize is the fact that the price for such beneficence will be a 20% freight rate penalty. Under such circumstances it is not suprising that no groundswell of support for the proposal by small shippers has thus far become apparent.

Proponents' proposal would be equally devastating to large shippers such as these protestants. For example, Exhibit 1 identifies (1) ConAgra's processing locations, (2) average weekly carload usage of wheat or corn as the case may be at each plant, (3) average per car rate increases for typical rail movements to each respective processing plant and (4) the monetary impact upon ConAgra, assuming all carload grain did move from the identified origins to ConAgra's plants

throughout duration of the 13 week period of effectiveness for the peak period rates here protested. Similar impact data is shown in Exhibit 1 for the other protestants.

These protestants, major processors of grains within SFA Territory, can be looked upon as "bread and butter" patrons of the railroads. Their usage of grain and hence, need for rail transportation services, is consistent week in and week out. The so-called peak period of September 15 to December 15 in no way influences their volume of grain usage as processors. They will not sit idly by and incur rate penalties of the magnitude reflected in Exhibit 1 without vigorous efforts to hold their transportation costs down.* The competitive forces that prompted the initial "Big John" rates in the year 1963 are far too prevalent today to permit rate increases of this magnitude to succeed. These protestants cannot and will not permit their competitive posture in the market place to be eroded by penalty rates that do not touch many of their competitors located outside the South.

In summary, the justification submitted by proponents is perhaps the most compelling possible evidence of why the proposed rates must be suspended and carefully investigated.

VIII.

The Proposal Must Be Suspended In View Of The Absence Of Any Reasonable Study Or Analysis Of Possible Causes For Any Claimed Surge In Demand

*/ Such efforts will not consist of delayed shipments or added storage.

Resulting From World Marketing Forces, The Export Market, And Other Circumstances Which Will Not Be Influenced By Freight Rates

Among factors ignored by proponents is the influence of the demand for export grain on car use in the South. It is common knowledge that the availability of large quantities of low priced grain in the market each Fall creates an export demand more intense than at other times of the year. Yet, the carriers' blanket approach to seasonal rates fails to take the strain, if any, in equipment availability during September 15 through December 15. Also ignored by the carriers is the influence of the world demand for grain in view of the steadily declining trend in prices since 1974, a trend which has remained steady irrespective of volume.* None of these influences will be affected in the slightest by a 20% punitive increase in rates to, from and within SFA Territory.

Reliable projections by the U.S. Department of Agriculture for 1977 indicate that this Fall's feed grain crop in the Southeast will be substantially less than that harvested in 1976, an atypical year. See Exhibit 5. Hence, any strain experienced by SFA carriers in 1976 will likely not be repeated this year. Beyond this, the Administration recently announced it will raise immediately the loan rate on 1977 corn to $2.00 a bushel from $1.75 a bushel. This increase in the loan rate will encourage farmers to hold crops, enabling them to wait for higher prices before sale. The result will be less demand for rail service as many

*/ Exhibit E attached to Mr. Thompson's statement demonstrates the downward trend in grain prices which is a reflection of the declining ratio of demand to supply.

farmers defer sale and shipment.

It is also common knowledge that a serious drought has largely destroyed the 1977 Southeastern corn crop. For this reason, proponents use of abnormal 1976 production figures as the basis for their proposal is totally unrealistic. As shown in Exhibit 5, corn production in the Southeast during 1976 reached a record high of 613,891,000 bushels, whereas the U.S.D.A. crop forecast for 1977 is only 364,895,000 bushels. Hence, there will be little "surge" this Fall in corn shipments within the Southeast. While inbound rail shipments will originate outside SFA Territory on foreign lines in foreign equipment, this circumstance will not burden SFA carriers with equipment demands. It is highly unfair and punitive to assess a 20% increase against receivers who face lack of local crop availability due to the current drought. The proponent carriers were well aware of drought conditions in the Southeast as of June when the current proposal was finally processed by the rate bureau.

In summary, all circumstances as now known certainly refute the railroads' contention that an "emergency" need for incentive or peak seasonal rate application exists this year.

IX.

Conclusion

It is indeed difficult to conceive of a more striking illustration of how a sound concept can be misapplied through faulty assumptions so as to create a rate proposal which, if implemented, would surely do more

harm than good. Further, because of the timing chosen by the railroads, and basic characteristics of the grain trade that have been utterly ignored by proponents, the proposal cannot have the results intended by Section 15(17). Instead it can result only in a totally unwarranted and unjustified rate increase of unprecedented magnitude. For these protestants alone, who do not contribute in any way to seasonal imbalances, the unavoidable penalties will approach one million dollars.

To allow such an ill-conceived proposal to become effective without suspension and investigation would establish an unfortunate precedent which would undoubtedly go a long way toward alienating the shipping public to the whole concept of demand-sensitive rates. The result would serve only to make it more difficult to eventually begin to develop the type of effective and beneficial applications of demand-sensitive rates which were envisioned by Congress in the enactment of Section 15(17).

EXHIBIT I

Processing Location	Typical Grain Origin	Current Per Ton Rate	Proposed Per Ton Rate	Per Ton Rate Increase	Average Jumbo Hopper Car Usage* per wk.	Total Penalty to ConAgra (Weekly) usage x 13 weeks
Decatur, AL	E. St. Louis, IL(wheat)	$ 6.12½(1)	$ 7.35(1)	$1.20	34 Carloads	$ 53,040.00
Decatur, AL	Terre Haute, IN(corn)	5.22½(2)	6.58(2)	1.62½	33	62,741.25
Enterprise, AL	Terre Haute, IN(corn)	9.61½(2)	12.11½(2)	2.50	16	46,800.00
Jacksonville, FL	Terre Haute, IN(corn)	10.52½(3)	13.26(3)	2.73½	3	9,599.85
Knoxville, TN	Terre Haute, IN(corn)	6.42½(4)	8.10(4)	1.67½	4	7,839.00
Macon, GA	E. St. Louis, IL(wheat)	8.80(5)	10.56(5)	1.76	20	45,760.00
Macon, GA	Terre Haute, IN(corn)	7.99(8)	10.07½(8)	2.08½	2	4,878.90
Tampa, FL	Terre Haute, IN(corn)	13.51(3)	17.01(3)	3.50½	3	12,302.55
Tampa, FL	E. St. Louis, IL(wheat)	13.29½(7)	15.95½(7)	2.66	17	58,786.00
Tunnel Hill, GA	Terre Haute, IN(corn)	7.90(11)	9.48(11)	2.38	15	46,410.00
Augusta, GA	Terre Haute,IN(corn)	9.99½(9)	11.99½(9)	2.00	3	7,800.00
Shady Dale. GA	Princeton, IN(corn)	7.49(10)	8.99(10)	1.50	1	1,755.00
			Average Increase	$2.12 per ton		$357,712.55

(1) SFTB Freight Tariff 972-F, ICC S-1359, Item 18150
(2) SFTB Freight Tariff 972-F, ICC S-1359, Item 36201
(3) SFTB Freight Tariff 972-F, ICC S-1359, Item 36202
(4) SFTB Freight Tariff 972-F, ICC S-1359, Item 36207
(5) SFTB Freight Tariff 972-F, ICC S-1359, Item 18350
(6) SFTB Freight Tariff 972-F, ICC S-1359, Item 36202
(7) SFTB Freight Tariff 972-F, ICC S-1359, Item 18225
(8) SFTB Freight Tariff 972-F, ICC S-1359, Item 36205
(9) SFTB Freight Tariff 972-F, ICC S-1359, Item 36203
(10) SFTB Freight Tariff 972-F, ICC S-1359, Item 32000
(11) SFTB Freight Tariff 972-F, ICC S-1359, Item 36206

*Corn based on 190,000 lbs. per car and wheat on 200,000 lbs. per car

Processing Location	Typical Grain Origin	Current Per Ton Rate	Proposed Per Ton Rate	Per Ton Rate Increase	Average Jumbo Hopper Car Usage* per wk.	Total Penalty to SAMCO (Weekly) usage x 13 weeks
Jacksonville, FL	Chattanooga, TN (wheat)	$ 6.36 ½(1)	$ 7.63 (1)	$1.26 ½	24 carloads	$ 39,468.00
Culpeper, VA	Chattanooga, TN (wheat)	7.12	8.54 ½(2)	1.42 ½	49	90,722.50
Chattanooga, TN	E. St. Louis, IL (wheat)	6.29 (3)	7.55 (3)	1.26	30	49,140.00
			Average Increase	$ 1.39 per ton		179,380.40

(1) SFTB Freight Tariff 972-F, ICC S-1359, Item 20200
(2) SFTB Freight Tariff 972-F, ICC S-1359, Item 20775
(3) SFTB Freight Tariff 972-F, ICC S-1359, Item 18700

* *Based on average loading 200,000 lbs. per car*

Processing Location	Typical Grain Origin	Current Per Ton Rate	Proposed Per Ton Rate	Per Ton Rate Increase	Average Jumbo Hopper Car Usage* per wk.	Total Penalty to ADM Co.(Weekly) usage x 13 weeks
Charlotte, NC	E. St. Louis, IL (wheat)	$ 9.98 ½(1)	$11.98 (1)	$1.99 ½	36 carloads	$ 93,366
Kershaw, SC	Louisville, KY (soybeans)	7.35 (2)	8.82 (2)	1.47	36	68,796
			Average Increase	$1.77 per ton		162,162

(1) SFTB Freight Tariff 972-F, ICC S-1359, Item 18500
(2) SFTB Freight Tariff 972-F, ICC S-1359, Item 16600

* *Based on average loading 200,000 lbs. per car*

Processing Location	Typical Grain Origin	Current Per Ton Rate	Proposed Per Ton Rate	Per Ton Rate Increase	Average Jumbo Hopper Car Usage* per wk.	Total Penalty to ConAgra (Weekly) usage x 13 weeks
Knoxville, TN	Terre Haute, IN	642½	8.10 (1)	$1.67 ½	20 carloads	$ 43,550
Chattanooga, TN	E. St. Louis, IL	629	7.55 (2)	1.26	40	65,220
						108,770
Barnesville, GA**	–	–	–	–	–	

(1) SFTB Freight Tariff 972-F, ICC S-1359, Item 36207
(2) SFTB Freight Tariff 972-F, ICC S-1359, Item 18700

* *Based on average loading 200,000 lbs. per car*
** *Still under construction*

Exhibit 2

AVERAGE WEEKLY CORN USAGE

CONAGRA POULTRY DIVISION

Operating Location	Carloads*
Decatur/Athens, AL	22 cars
Enterprise, AL	16
Tunnel Hill, GA	15
	53 cars total weekly

CONAGRA AGRI-PRODUCTS (FEED) DIVISION

Augusta, GA	3 cars
Decatur, AL	12
Jacksonville, FL	3
Knoxville, TN	4
Macon, GA	2
Shady Dale, GA	1
Tampa, FL	3
	28 cars total weekly

*Based on hopper cars of approximately 190,000 lbs. each

Exhibit 3

SEABOARD'S RAIL WHEAT UTILIZATION AT CULPEPER, VA., AND JACKSONVILLE, FLA.

4 Week Period Ending	Equivalent 100 Ton Cars to Culpeper	Equivalent 100 Ton Cars to Jacksonville
Jan. 10, 1976	118	239
Feb. 7, 1976	130	252
Mar. 6, 1976	128	234
Apr. 3, 1976	131	257
May 1, 1976	119	258
May 29, 1976	130	265
June 26, 1976	121	288
July 24, 1976	131	284
Aug. 21, 1976	140	268
Sept. 18, 1976	132	257
Oct. 16, 1976	123	247
Nov. 11, 1976	115	252
Dec. 13, 1976	125	235

Exhibit 4

AVERAGE WEEKLY WHEAT USAGE

CONAGRA GRAIN MILLED PRODUCTS (FLOUR) DIVISION

Operating Location	Carloads**
Decatur, AL	34 cars
Macon, GA	20
Tampa, FL	17
	71 cars total weekly

**Based on hopper cars of approximately 200,000 lbs. each

EXHIBIT 5

SOUTHEASTERN STATES PRODUCTION TOTALS AND OFF-FARM AND ON-FARM STORAGE

	1971	1972	1973	1974	1975	1976	1977	
CORN	388,573	367,970	386,440	437,600	427,915	613,891	364,895	(1,000 Bu.)
SOYBEANS	193,971	181,579	207,831	216,653	284,155	243,685	278,035	(1,000 Bu.)
WHEAT	47,457	34,210	26,625	46,718	46,133	46,030	39,999	(1,000 Bu.)
SORGHUM	24,758	11,214	11,444	11,903	11,925	12,800	9,328	(1,000 Bu.)
TOTAL GRAINS*	654,759	594,973	632,340	712,874	770,128	916,406	692,257	(1,000 Bu.)
COTTON	3,661.8	3,564.6	3,557.4	3,266.3	1,868.7	2,143.3	2,485.2	(1,000 Bales)
PEANUTS	2,183,323	2,265,485	2,403,350	2,727,670	2,856,760	2,712,125	2,149,700	(1,000 Pounds)
OFF-FARM STORAGE (January 1)	249,720	261,610	268,070	276,400	291,390	308,670	333,980	(1,000 Bu.)
ON-FARM STORAGE				15,900	20,550	28,050	36,250**	(1,000 Bu.)

* Does not include oats, barley, rice or other minor grains grown in the area
** Includes only October 1976 through July 1977

States used in calculations are: N. Carolina, S. Carolina, Georgia, Florida, Alabama, Mississippi, Kentucky, Tennessee

Sources: Official Reports, U.S. Department of Agriculture, including Agricultural Stabilization and Conservation Service loan disbursements for on-farm storage, 1974-1977 (Oct. 1976 - July 1977)

Exhibit 6
Page 1 of 2

ARCHER DANIELS MIDLAND COMPANY (ADM)

(Letterhead)

July 20, 1977

Mr. L. E. King,
Director - Car Distribution
Southern Railway System
99-125 Spring Street, S.W.
Atlanta, Georgia 30303

Dear Mr. King:

For several years the SRS has had the policy that shippers, on-line, moving commodities in covered hopper cars, could not use private cars to load unless specific permission were obtained from your company.

SFA Empros 179 and 180 have now been approved to increase rates on grains and oil seeds by 20% from September 15, 1977, through December 15, 1977, to remove the demand for carrier furnished covered hoppers on movements of grains and oilseeds. This increase would not apply in shipper furnished equipment. If this publication is permitted to become effective, we request the following, in writing, from you:

1. That between September 15, 1977 and December 15, 1977, on-line shippers can use private covered hoppers for the loading of grain and grain products (soybeans and soybean meal) and the SRS will pay all mileage allowances.

2. That between September 15, 1977 and December 15, 1977, on-line shippers will be permitted to receive in their service foreign line *assigned* covered hoppers.

The two above matters should not be objected to as such cars will contribute to your alleged fleet shortage during this period.

Please confirm by return mail as soon as possible.

Yours truly,

/s/ John E. Harvey
John E. Harvey

JEH:cg

Exhibit 6
Page 2 of 2

SOUTHERN RAILWAY SYSTEM

(Letterhead)

August 24, 1977 abj

00-91

Mr. John E. Harvey, Director of Corporate Transportation
Archer Daniels Midland Company
Post Office Box 1470
Decatur, Illinois 65 62525

Dear Mr. Harvey:

L. E. King recently forwarded me your letter of July 20 con-

cerning Southern's policy on the use of the shipper-owned or leased cars for loading on Southern. Southern's position was outlined to you in my letter of March 28, 1974, covering the conditions under which Southern is agreeable to accepting these cars for loading. The conditions apply to all points where rates are not restricted to shipper-owned or leased cars only.

As in the past, we will attempt to grant as much advance notice as possible when this 48-hour restriction will be removed. It is our intention that this be done prior to any appreciable shortage developing on Southern.

Sincerely,

/s/ J. A. Johnson

EXHIBIT 7

EXHIBIT OF EX PARTE INCREASES APPLIED TO GRAIN RATES IN SFA TERRITORY SINCE 1974

Ex Parte No.	Year Effective	% Increase	Cumulative Increase
X-299	1973	(1)	1.00
X-303	1974	4	1.04
X-305	1974	3.3 & 10	1.18
X-310	1975	7	1.26
X-313	1975	5. & 2.5	1.36
X-330	1976	7	1.46
X-336	1976	4	1.51

Explanation of References

(1) Base rate including Ex Parte 299 increase equals 1.00

VERIFICATION

STATE OF KANSAS)
) SS.
COUNTY OF COWLEY)

Wilson, Charles H. Jr., having been duly sworn deposes and says that he has read the foregoing statement and that the contents thereof are true as stated as they relate to the operation of Dixie Portland Flour Mills, Inc.

Charles H. Wilson, Jr.

Charles H. Wilson, Jr.

Subscribed and sworn to before me this 1st day of September, 1977.

Debra D. Brass

Notary Public

VERIFICATION

DISTRICT OF)
) SS.
COLUMBIA)

John R. Staley, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated as related to the operations of Seaboard Allied Milling Corp.

John R. Staley

John R. Staley

Subscribed and sworn to before me this 1st day of September, 1977.

Marjorie E. Rosen

Notary Public:
My commission Expires
September 14, 1981

APPENDIX B

BEFORE THE
INTERSTATE COMMERCE COMMISSION

SUSPENSION BOARD NO. 67123

VERIFIED STATEMENT OF EUGENE F. BILZ

My name is Eugene F. Bilz. I am President of the firm of E. F. Bilz Associates, Transportation Consultants, with offices at 5272 River Road, Bethesda, Maryland 20016.

I have been continuously engaged in transportation consulting work for more than twenty-three years. During this time, I have analyzed and prepared many revenue and cost studies pertaining to rail, motor carrier and water carrier operations. These studies cover practically all areas in the United States and were prepared on behalf of railroads, motor carriers, barge lines, offshore water carriers, state and Federal agencies and many individual shippers or shipper associations. I have appeared before the Interstate Commerce Commission and the regulatory agencies of several states as a witness in many proceedings to testify with respect to transportation cost and economic studies.

While engaged in the preparation of these studies over the past twenty-three years, I have, on many occasions, prepared or employed Rail Form A, the cost formula developed by the Cost Finding Section of the Interstate Commerce Commission. I have participated in many cost studies dealing with the movement of grain and grain products and in the course of such studies, have visited grain handling facilities and observed the movement of grain by rail to such facilities.

My statement in this matter before the Commission is submitted on behalf of the following protestants: Archer Daniels Midland Company, ADM Milling Company, ConAgra, Inc., Dixie Portland Flour Mills, Inc. and Seaboard Allied Milling Corporation. These protestants have asked me to review and comment upon the statements and exhibits contained in the justification statement which the Southern Freight Association submitted to support the application of a 20 percent increase on grain movements in the period from September 15 through December 15, 1977 (Supplement Nos. 201, 137 and 23 to SFTB Tariff Nos. 988A-A, ICC S-909, 908-B, ICC S-999, and 972-F, ICC S-1359). In particular, I have been requested by these protestants to focus on statements and justification data, offered by the Southern railroads, dealing with revenues and costs as well as other subjects such as car utilization and operations insofar as they affect revenues and costs.

After examining the statements and purported justification offered by the railroads for the proposed 20 percent increase, I find a number of serious errors in the statements, conclusions and points raised by the railroads. In general, the submission of the Southern railroads does not support a 20 percent increase in grain rates during the specified period. Specific points with which I take issue are discussed in the following sections.

Nature of the Proposed Increase

In the Report of the Commission in Ex Parte No. 324 served on February 4, 1977, involving proposed standards and expeditious procedures for establishing railroad rates based on seasonal, regional or peak period demand for rail services, the Commission stated (Page 11):

> "... while seasonal rates are multi-tiered, it does not follow that the only way to implement such rates is to establish the peak-period rate as higher and the off-peak rate as lower than present rates. Rather, where the present rate is adequate or the carriers fear diversion, the carriers may opt to set the peak-period rate at the present level and provide the rate incentive necessary to entice traffic to the off-season simply by lowering the rate during that time."

In this statement of the Commission, the incentive noted by the Commission takes the form of a *reduced* rate during the off-season. It is interesting to note that the Southern railroads at various points throughout their justification statement also use the word "incentive" in connection with the proposed peak period rates; however, in this case, the "incentive" takes the form of a *20 percent increase* in rates during the peak period. It should be established at the outset, therefore, that the railroads are not holding out a positive incentive to shippers but, instead, are proposing to impose a *penalty* on any grain shipment which moves during the normal period following the grain harvest. The railroads strongly urge shippers to make the capital investments necessary to build new grain storage facilities; yet, at the same time, they fail to provide rate reductions in the off-season which

would be an incentive for such capital outlays.

The statement offered by the Southern carriers attempts to soften the apparent impact of the proposed 20 percent increase by claiming that, since the increase applies to only a three-month period, it may be equated to an annual increase of only 5 percent. In may opinion, this obvious attempt to play down the harsh reality of the 20 percent increase distorts the impact of the increase on grain shippers. The railroads' estimate is a serious oversimplification and is inconsistent with the purported rail showing of carloadings appearing in the graph on Page 3 of the justification statement. Thus, the railroads' own data shows that the computed annual average of 5 percent is grossly inaccurate.

Equipment Utilization

One of the primary reasons for the proposed penalty increase offered by the railroads is that it may have the effect of spreading movements of grain traffic over a greater number of months of the year and may improve the Southern railroads' car supply and utilization. In discussing their need to supply equipment to meet this peak demand, the railroads cite the high cost of 100-ton covered hopper cars (Exhibit II, Page 5) and the need to divert smaller covered hopper cars, normally used for non-grain commodities, into grain service during the peak season (Exhibit X, Page 2).

The chart offered in Exhibit XI, covering carloads handled by the L&N and SCL in 1976, appears to present a much more informative picture of actual car

utilization than the graph on Page 3 of the justification. By reference to Exhibit XI, it may be noted that the movement of grain in 100-ton covered hopper cars can be considered to be relatively uniform throughout the year, since the range of carloads extends from a low of 2,850 cars in March to a high of only 4,550 cars in September. The average for jumbo hopper cars reflected in Exhibit XI is about 3,500 carloads per month throughout the year. The lowest number of carloadings shown for March is about 19 percent below this average. The high shown for September is about 30 percent higher than the average. Carloads shown for November, one of the months included in the proposed rate increase, are about 9 percent lower than the average throughout the year. On the whole, taking one half of the carloads shown for September and December and all of the carloads shown for October and November — to roughly correspond with the September 15th - December 15th period of application of the proposed rates — traffic handled in 100-ton covered hoppers during the period of application of the proposed rates averages to about 3,860 cars per month, or *only 10 percent higher* than the average per month in 1976. This, in my opinion, shows that insofar as the more capital intensive, 100-ton covered hopper cars are concerned, utilization of equipment during the fall months is only slightly greater than during the rest of the year. Therefore, if there are any unusual or additional ownership costs generated by or resulting from seasonal movements of grain, these costs, if any, are not attributable to the use of jumbo covered hopper cars.

I should also note that Exhibit XI indicates only that cars loaded with whole grains were "handled" by

L&N-SCL and, accordingly, it cannot be determined from the exhibit the extent to which private or foreign line cars were involved. Grain loadings in private or foreign equipment do not place a strain on the use or availability of L&N-SCL cars. Even if the carloadings shown in small hoppers were in cars of L&N-SCL, it cannot be assumed that a "revenue loss" occurred (Justification, Page 16) since such equipment could have been unused or idle during the fall period. I discuss this later in my statement.

Reference to Exhibit XI shows that box cars contribute in only a minor way to the seasonal imbalance since box cars accounted for only a very small portion of the total carloads. As to small covered hopper cars, Exhibit XI purports to show a very strong peak beginning in August and extending through the fall months. These cars are described in Exhibit X (Page 2) as "lower-cube cars which are normally used for non-grain commodities (though they may be pressed into grain service during the peak season)." Fertilizer is one of the principal non-grain commodities carried in the smaller covered hopper cars. As is the case with grain, fertilizer traffic also peaks at a certain time during the year, normally in the late winter and early spring months prior to planting time. Thus, there is the distinct probability that insofar as the smaller covered hopper cars are concerned, the cycle of grain movements is not synchronized with the cycle of fertilizer movements and, possibly, movements of other commodities. It is probable, therefore, that the peaks and valleys associated with grain movements in the South might be counter cyclical to movements of other commodities or movements in other regions.

In the justification data submitted by the railroads in this matter before the Commission, there is no mention made of the seasonal or regional cycles associated with movements of non-grain traffic. The Commission's consideration of the potential effect which the proposed 20 percent increase in peak period grain rates may have on car utilization should not be made in a vacuum without detailed information submitted in advance as to how car utilization for grain traffic fits in with the cycles for other traffic. In connection with grain carried in box cars and the smaller covered hoppers, the railroads have not shown that distribution of carloads to a greater number of months per year would not interfere with the normal flow of other traffic, creating additional problems and expense which would not be encountered under present operations.

Cost of Service

In the Report of the Commission in Ex Parte No. 324 served on February 4, 1977, in connection with the furnishing of cost data, the Commission concluded (Page 27):

> "Thus, if the rail carriers foresee that the reception of a proposal will be less than favorable, it would be appropriate to include total justification with their tariff proposal."

This "urging" of cost and revenue data to be submitted by the carriers was reiterated by the Commission in its Order in Ex Parte No. 324 served on July 20, 1977. 49 C.F.R. 1109.10 includes standards for cost and revenue data which the carriers are urged to include in their justification statements. For seasonal or

peak period rates, the carriers are urged to submit the total variable costs and total revenues on two bases: assuming the proposed seasonal or peak period rates were in effect for the specified period and assuming the proposed rates were not in effect for the specified period. In connection with the instant proposal before the Commission, the carriers have not submitted the cost evidence recommended by the Commission in Ex Parte No. 324.

The only evidence relating to rail costs submitted by the carriers (Exhibit III and Appendix B) is not responsive to the recommendations of the Commission. The cost data offered by the carriers represent merely a "burden study" approach to determining territorial average costs for grain traffic carried within Southern Territory and between Southern and Official Territory. In connection with the latter movements, it should be noted that the proposed rates apply only to certain Official Territory points in Indiana and Illinois; whereas, the traffic and revenue statistics to which costs are applied in Exhibit III cover movements between all points in Official Territory and the South. Because of this deficiency alone, the revenue-variable cost comparisons shown in Exhibit III for movements between Official and Southern Territory are of no value in judging the compensatory level of rates involved in the instant rate proposal.

As to total grain traffic transported within the South, Exhibit III of the railroads' statement purports to show that the ratio of revenues to variable costs amounted to 128 percent for traffic handled in the year 1975. As noted above, the procedure followed in Exhibit III is similar to the methodology used in

determining the rate-cost relationship for many commodities in the Commission's burden studies. The variable costs resulting from this procedure represent merely the application of territorial average unit costs for covered hopper cars to a 1 percent sample of terminations in the year 1975. Since no adjustments are made to reflect the particular operating characteristics associated with grain movements in the South, the relationship of revenues to variable costs developed in Exhibit III is a very limited significance in measuring the overall compensativeness of grain traffic in the South. Moreover, the data introduced by the railroads provides no indication of the revenue-cost relationships which would occur under the assumption that the peak period rates were in effect during the prescribed period.

An indication of the reason for the railroads' failure to follow the recommendations made by the Commission in Ex Parte No. 324 as to submission of cost justification may be found in their statement that "the railroads do not consider the demand-sensitive rates as cost-based rates" (Page 14 and Exhibit III, page 1). The railroads appear to have taken this position since a 20 percent increase in grain rates during the prescribed period cannot be supported on the basis of costs.

Statistics used in developing the revenue-variable cost ratio for movements of grain within the South in Exhibit III (Appendix B, Commodity 0113) reflect an average haul of 305 miles (ton-miles divided by tons) and an average load of 87 tons per car (carloads divided by tons). The latest territorial cost scales prepared by the Commission's Bureau of Accounts

(Statement 1C1-74) show that for a comparable movement of a 90-ton load in covered hopper cars for a distance of 300 miles in the South, the variable cost amounts to 18.4 cents per hundredweight. Car ownership cost amounts to approximately 21 percent of the total cost. In their submission to the Commission in support of the 20 percent increase, the railroads place strong emphasis on their claim that utilization of cars during the peak period of grain movements generates increased car costs. If car costs for an average haul in the South constitute about 21 percent of total variable cost, as indicated by the above analysis, car costs would have to increase by 100 percent above the average cost in order to support a rate increase of 20 percent. The railroads have introduced no supporting data to quantify the alleged increase in car costs resulting from utilization of the equipment during peak periods. Obviously, the increase, if any, does not begin to approach the 100 percent increase required to justify a 20 percent rate increase. It appears that on the basis of the rail data submitted, the selection of the 20 percent increase was arbitrary.

An even more important reason why the peak period rate increase cannot be supported on a cost basis is that the reduced costs for handling volume shipments of grain must also be taken into account. The many rates in existence in this country on many types of traffic handled in multiple car, trainload or unit train shipments reflect cost savings to the carriers brought about by such volume movements. Concentration of grain traffic into a greater number of cars per switch cut and into trains with greater-than-average tonnage during the peak period of grain movement works in the same way to reduce the carriers' unit costs as

multiple car and trainload shipments. Less expense would be incurred in switching ten cars to a grain elevator in a single switch cut during the grain peak than in handling the same number of cars in two or three switch cuts during the off-season. Similar examples of cost savings could be cited in connection with the distribution of train crews wages and locomotive expense over heavier trains operated during the normal grain season. The point to be made here is that there are cost savings brought about by volume movements of grain which must be recognized along with any cost increases which may be brought about by the intensified use or placement of equipment. The net result is that a rate increase in the magnitude of 20 percent cannot be justified on a cost basis. In view of the foregoing basic principles of rail operations and costs, it is difficult for me to understand how Mr. Jones (Exhibit IX) can bring up the matter of purported increases in the "cost of handling grain cars" and totally ignore the reductions in unit costs brought about by volume movements.

One final point which can be made in connection with car expense concerns the increase in the cost for 100-ton covered hopper cars shown by the railroads. For example, Exhibit II (Page 5) cites an increase of 47 percent in the cost of such equipment bought by the Family Lines in the period between 1973 and 1977. In addition to the fact that rail Exhibit XI shows no significant peak in the utilization of covered hoppers, it should also be pointed out that, according to data developed by protestants, freight rates applicable to the involved grain traffic transported in Southern Territory increased by 51 percent in the period from 1974 up to the present time.

Summary

On the basis of the preceding analysis of justification data provided by the railroads, the following conclusions are warranted:

1. The railroads are seeking to impose a penalty during the peak period of grain movement rather than offering a rate reduction as an incentive to shippers to schedule traffic during the off season. This procedure works counter to the railroads' recommendation that shippers make the capital expenditures to construct additional grain storage facilities to permit off-season grain movements. An incentive in the form of a rate reduction during the off season could possibly make such capital outlays feasible for some shippers.

2. The peak in grain carloadings during the fall months claimed by the railroads affects the utilization of 100-ton covered hopper cars to only a minor degree. Traffic carried by the railroads in 100-ton covered hopper cars during the peak period covered by the proposed rates is only 10 percent higher than the average number of carloads per month throughout the year. Because of the relatively uniform utilization of jumbo hopper cars throughout the year, the railroads' claims concerning alleged increased costs for positioning such equipment during the period of peak loadings are entitled to little weight.

3. Data submitted by the Southern railroads indicates that the surge in carloadings during the grain season is handled primarily in small covered hopper cars normally used for non-grain traffic. Grain traffic carried in such cars could be counter cyclical to other

traffic transported in the same equipment and help to increase the year-round utilization of the equipment.

4. The railroads have not provided any information concerning the seasonal or regional cycles associated with movements of non-grain traffic. No evaluation of their claims for improved car utilization and reduced operating expenses as a result of the proposed peak-period increase can be made by reference solely to the grain carloading statistics submitted by the railroads.

5. Because the railroads have not submitted any information concerning revenues and variable costs as specified by the Commission, no conclusions can be reached concerning the need for any rate increase from the standpoint of costs.

6. There is no quantifiable support in the railroads' justification statement which would demonstrate a rational basis for a 20 percent increase in grain rates during the peak period.

7. The railroads' statement stresses purported cost increases generated by movements during the peak periods. Unit cost savings resulting from volume movements during the peak period, reflecting a greater number of cars per switch cut, higher train weights and other factors, should also be taken into account. No showing of the net increase or reduction in unit costs has been made by the railroads.

8. The railroads have not justified the proposed 20 percent increase in grain rates in the purported peak period.

Certificate Of Service

We hereby certify that on this 6th day of September, 1977, we served copies of this protest, including its appendices, upon Bates B. Bowers, Chairman, Southern Freight Association and counsel Charles N. Marshall and Wandaleen Poynter, by first class mail, postage prepaid, in accordance with the General Rules of Practice of the Interstate Commerce Commission.

/s/ John H. Caldwell

/s/ Peter A. Greene

/s/ Neal A. Jackson

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Petition for Rejection of
Tariffs of Archer Daniels
Midland Company,
Conagra, Inc.
Dixie Portland Flour Mills,
Inc., Seaboard Allied Milling Corp.
ADM Milling Co.

Sept. 6, '77

THIS MATTER REQUIRES IMMEDIATE ACTION

Before the
INTERSTATE COMMERCE COMMISSION

Suspension And Fourth Section Board No. 67123
Office Of Proceedings No. 36663

PETITION FOR REJECTION OF TARIFFS

ARCHER DANIELS
MIDLAND COMPANY
CONAGRA, INC.
DIXIE PORTLAND
FLOUR MILLS, INC.
SEABOARD ALLIED
MILLING CORP.
ADM MILLING CO.

By John H. Caldwell
Peter A. Greene
Neal A. Jackson

Their Attorneys

Of Counsel:

CALDWELL & GREENE
900 17th Street, N.W.
Washington, D.C. 20006

Dated: September 6, 1977

THIS MATTER REQUIRES IMMEDIATE ACTION

Before the
INTERSTATE COMMERCE COMMISSION

Suspension And Fourth Section Board No. 67123
Office Of Proceedings No. 36663

PETITION FOR REJECTION OF TARIFFS

Archer Daniels Midland Company, ADM Milling Co., ConAgra, Incorporated, Dixie Portland Flour Mills, Inc., and Seaboard Allied Milling Corp., pursuant to Section 4 of the Interstate Commerce Act (the "Act") and the provisions of Rule 1100.99 of the Commission's Rules of Practice (49 C.F.R. 1100.99), petition the Commission to reject Supplements Nos. 201, 137 and 23 to SFTB Tariff Nos. 988-A, I.C.C. S-909, 908-B, I.C.C. S-999 and 972-F, I.C.C. S-1359, Respectively, Joint and Local All-Rail Rates, Also Distance Rates on Grain, Carloads, by Southern Freight Association, Agent. In support of this petition, petitioners state as follows.

The subject unprecedented tariff, which would impose on these petitioners for the next three months an onerous 20 percent penalty increase in the rates which they must pay on rail transportation for grain moving to, from or within SFA Territory, violates Sections 1, 2, 3, and 15(17) of the Act. Petitioners have described those violations in the verified complaint filed contemporaneously herewith.

However, the proposed tariff also violates Section 4 of the Act.* Exhibit A sets forth one illustrative example of a Fourth Section violation of the type which would occur as a result of the proposed "seasonal" increase. Petitioners could cite numerous others as well but see no point in burdening the record with repetitious illustrations.

Metropolis, Ill., is an intermediate point between Reevesville, Ill. and Marks, Miss. on ICG. During the period September 15, 1977 through December 15, 1977 the subject tariff sets the rate on grain from Reevesville, an origin more distant from Marks than Metropolis, at 537½ cents per net ton. This rate is 64½ cents per net ton lower than the rate of 602 cents per net ton on grain originating at Metropolis, Ill. and moving to Marks, Miss.

This is but one illustration of the countless unauthorized fourth section departures which permeate the entire proposal as a result of its careless draftsmanship. These situations represent clear violations of Section 4 of the Act. Inquiry at the Commission has disclosed that no application for relief for these departures has been filed by any of the railroads here involved. The 4-R Act did not affect the requirement that prior permission be obtained for publication

*/ Section 4(1) provides in pertinent part that: "It shall be unlawful for any common carrier subject to this part . . . to charge or receive any compensation in the aggregate for the transportation of . . . like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance . . . *Provided*, that upon application to the Commission and after investigation, such carrier, in special cases, may be authorized by the Commission to charge less for longer than for shorter distances . . ."

of rates which violate Section 4. Indeed the very section of that Act which added the seasonal rate provisions expressly stated:

> "nothing in the amendments made by this section . . . shall be construed —
>
> (1) to modify the application of section 2, 3, or 4 of the Interstate Commerce Act in determining the lawfulness of any rate or practice . . . "P. L. 94-210, Section 202(f).

The viability of Section 4(1) and the clear intent of Congress that proscriptions embodied therein may not be departed from without specific prior approval of the Commission granted after full consideration of all relevant factors has been repeatedly emphasized by the Courts. Where, as here, attempts have been made to circumvent such requirements the Courts have consistently prohibited the effectiveness of the involved rates. See, for example, *Mechling Barge Lines, Inc. v. United States,* 376 U.S. 375, (1964) and *Seaboard Allied Milling Corp. v. United States,* 306 F. Supp. 879 (W.D. Mo. 1969). The Commission need not be reminded of the teachings of the Courts requiring strict observance of the standards imposed by Section 4(1) of the Act.

In view of the unauthorized fourth section departures which they would create, the tariffs to which this petition is directed are *prima facie* unlawful and must be rejected by the Commission. It is essential that the Commission act immediately on this petition in order to avoid immediate irreparable and unavoidable injury to petitioners as is more fully described in the verified complaint cited in support of their peti-

tion for suspension.

WHEREFORE, the Commission must reject the subject tariffs.

Respectfully submitted,

ARCHER DANIELS
MIDLAND COMPANY
CONAGRA, INC.
DIXIE PORTLAND
FLOUR MILLS, INC.
SEABOARD ALLIED
MILLING CORP.
ADM MILLING CO.

By John H. Caldwell

Peter A. Greene
Neal A. Jackson

Their Attorneys

Of Counsel:

CALDWELL & GREENE
900 17th Street, N.W.
Washington, D.C. 20006

Dated: September 6, 1977

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of September, 1977, I served copies of this protest, including its appendices, upon Bates B. Bowers, Chairman, Southern Freight Association and counsel Charles N. Marshall and Wandaleen Poynter, by first class mail, postage prepaid, in accordance with the General rules of Practice of the Interstate Commerce Commission.

/s/ Peter A. Greene

EXHIBIT A

ILLUSTRATION OF FOURTH SECTION DEPARTURE UNDER PROPOSED ADJUSTMENT TO MARKS, MISSISSIPPI

Origin	Route	Miles	Rate
Reevesville, Ill.	ICG	264	537½
Metropolis, Ill.	ICG	251	602

Tariff Authority
Item 32880 of STFB 972-F, ICC S-1359

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Southern Freight Association's Reply to Protests and Petitions for Suspension

Sept. 8, '77

Before the
INTERSTATE COMMERCE COMMISSION

REPLY TO
PROTESTS AND PETITIONS FOR
SUSPENSION FILED BY ALABAMA POULTRY
INDUSTRY ASSOCIATION, ET AL.

SUSPENSION BOARD CASE NO. 67123

Effective Date:	September 15, 1977 through December 15, 1977
Tariff Reference:	Supplement Nos. 201, 137 and 23 to SFTB Tariff Nos. 988-A, I.C.C. S-909, 908-B, I.C.C. S-999 and 972-F, I.C.C. S-1359, Respectively, Joint and Local All-Rail Rates, Also Distance Rates on Grain, Carloads
Subject:	Demand-Sensitive Rates on Whole Grain & Soybeans
Within:	Southern Freight Association Territory, including Certain Official Territory Points in Indiana and Illinois

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Southern Freight Association
151 Ellis Street, N.E.
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Of Counsel:

CHARLES N. MARSHALL

WANDALEEN POYNTER

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REPLY TO PETITIONS FOR SUSPENSION

SUSPENSION BOARD CASE NO. 67123

Comes now Bates B. Bowers, Chairman, Southern Freight Association, on behalf of the Southern Territory Railroads, and files this reply to the petitions for suspension and investigation filed by various parties.

I. PRELIMINARY STATEMENT

The proposed tariffs will provide the first formal experience in the effect of a demand-sensitive rate on seasonal movements of grain. Only through experience can the effects be learned, for there are no earlier examples to guide us. Our premise, however, is that the new rates will cause changes in shipping patterns:

> A fundamental premise of most sections of the American economy is the ability of the American producers to change in the face of changing market conditions. There is no reason to assume that a firm that can successfully adjust to changes in the price of every other input (including unregulated transportation charges of trucks and barges) cannot do the same with respect to changes in the cost of rail transportation charges.
>
> Ex Parte 324 (slip p. 10).

This is the opportunity to gain some experience — in what is admittedly an experiment — as to the ability of shippers to restructure grain shipments and level out peak-period movements. The reasons for this experiment were spelled out in the carriers' Justification Statement.

The commodities on which the proposed seasonal rates will apply are exempt from regulation by the Interstate Commerce Commission when transported by barge or motor carrier. It is well established that rates assessed by those carriers are broadly adjusted to meet demand. Barge rates, for example, fluctuate from 85 percent of published tariff during the non-harvest season to as much as 240 percent of published tariff during the grain harvest season. It was the intent of Congress in passing the 4-R Act to accord rail carriers the ability to become more competitive with these pricing practices of the barge and truck lines.

The respondents do not agree that some shippers should be exempted from the seasonal rates because those shippers move level volumes the year around.

Manifestly, any movement of grain during the peak movement season contributes to the congestion that the schedules are designed to alleviate. Level volume shippers may be able to defer some of their movements until after the peak season. If *any* shipper restructures the pattern of its movements to avoid movements during the peak-movement period, the purpose of the new rates will in part be accomplished.

Moreover, this is in part a revenue-producing measure. The new rates depend in part upon the carriers' judgment that it is fairer to extract this revenue during peak periods at a time when efficiency is impaired and costs are high. That way many shippers can avoid the burden of the increase and in so doing contribute to the welfare of all. It is not, however, the expectation of the carriers that peak movement will be completely eliminated or that no revenue gain will result.

II. PETITIONERS HAVE SHOWN NEITHER IRREPARABLE HARM NOR A LIKELIHOOD OF SUCCESS ON THE MERITS.

SFA accepts the basic premise of the Southeastern Poultry Industry (SEPI) that there is a relatively constant movement of feed grain for their benefit. However, SFA will not accept that SEPI can't improve its shipping patterns to divert movements away from the peak season. An industry of admitted national importance should not take pride in announcing that its weighted average storage capacity is sufficient to sustain supplies for only 12.45 days. The SEPI is obviously relying on the storage capacity of another area. The origin grain producing points in In-

diana and Illinois have been forced to accept the primary burden of storage for the Southeast, forcing greater quantities of grain to search for markets during harvest. Good or even moderately sufficient storage in the Southeast would allow far greater alleviation of peak demand at harvest time.

While it is a well-recognized fact that the Southeast is a grain deficit territory, it is also a fact that the bulk of the grain which is actually harvested in the Southeast (production figures have increased dramatically in the last few years), moves to the Gulf Ports for export. As the Exhibits clearly indicate*, the earlier harvest in the Southeast accounts for the beginning of the peak season escalation in movements. This is followed closely by the more northern harvest movements. One explanation for the movement of the Southern grain for export is the total absence of adequate storage in the South.

Respondents accept the fact that additional storage capacity will not materialize overnight. However, the storage capacity which *is* available, if used properly with a view toward alleviation of peak period movements, should aid all parties in avoiding a sudden influx of grain and overtaxing car supply. There is absolutely no way to determine just how much effect a demand-sensitive rate will have on grain movements without a trial period. We must have that trial.

Complainants, Illinois Department of Agriculture, Statesville Flour Mills, Inc., and Bartlett and Com-

*/ See Justification Statement
See also Exhibit attached to this statement on Comparison on Domestic and Export Shipments.

pany, do not allege or attempt to show that substantial injury will result from the tariff schedules. The petitions of the State of North Carolina Department of Agriculture, General Mills, Inc., and Carnation Company do not allege or attempt to prove that substantial injury would result from the proposed rates nor do they maintain or try to show that there is a probability that they will prevail on the merits if the tariff schedules are suspended.

Other complainants, such as New Orleans Traffic and Transportation Bureau, Secretary of Agriculture, Garvey, Inc., The Board of Trade of Kansas City, Missouri, Inc., Piedmont Mills, Inc., Commissioner of Agriculture and Commerce of the Commonwealth of Virginia, Robert D. Orr, Lieutenant Governor and Commissioner of Agriculture of the State of Indiana, The Early and Daniel Company, Inc., and National Council of Farmer Cooperatives included in their petitions generalized unsupported statements such as "The Protestant states — and will cause substantial injury to those persons represented by the Protestant" or "Protestant further avers that the increase in rates — will result in substantial injury to The Early and Daniel Company, Inc., the grain industry, and the participating railroads." These allegations, for all practical purposes, represent an attempt to paraphrase the statute and are devoid of the "specific facts" the statute requires.

The most significant evidence of failure to show injury appears in the statements of those protestants who do attempt to provide specific facts. The obvious inconsistencies among the several petitions make any finding of substantial injury impossible. The allega-

tions of injury are made by two distinct groups: The representatives of farmers and the representatives of those who buy from farmers. Each asserts that its constituents will be forced to absorb the impact of the increase. The following quotations, taken from petitions as indicated, illustrate this basis contradiction:

"The impact — will be felt — most harshly by the farmer-producers, who will receive lower prices in the cash market for the product —"

Indiana Grain and Feed Association, et al, page 3.

"Since the price paid the producer is generally a market price less transportation costs, the producer is going to receive less for his products —"

USDA, page 4.

"Increased rail freight charges on grain mean decreased prices which the farmer receives for his grain . . ."

Board of Trade of the City of Chicago, et al, Page 12.

". . . a rate increase of 20 percent represents substantial increased costs for shipper — costs that will be borne by the poultry industry."

Alabama Poultry Industry Ass'n., et al, page 4.

". . . total penalty charges approaching one million dollars would be incurred and absorbed [by these protestants]. . . . These protestants cannot pass on the 20% increase to their customers . . ."

Archer Daniels Midland Co., et al, page 7.

Further insight into the reliability of protestants' statements in this area may be had by examining Mr. Robert Orr's petition. Speaking as the Lieutenant Governor of Indiana, Mr. Orr describes the falling prices on country new corn as follows (p. 2):

Price of New Corn at Country Level, Per Bushel

	1975	**1976**	**Current**
	$3.12	$2.34	$1.40
[% Change vs. 1975]	—	-25.0	-55.1

This is in sharp contrast to the movement of consumer prices for items which use corn as a raw material:

U. S. Consumer Price Indexes (1967 = 100)

	1975	**1976**	**June 1977**	**% Change June '77 vs. 1975**
Flour	165.4	154.7	146.4	-12.5
Poultry	162.4	155.7	160.3	- 1.3
Eggs	157.8	172.4	162.8	+ 9.5

BLS CPI Detailed Reports,
December 1976, June 1977.

It is evident that the effects of cost changes on the agribusiness industry are unpredictable and untraceable.

The petition filed on behalf of Archer Daniels Midland Company, et al, states on page 37 that "... the Administration recently announced it will raise immediately the loan rate on 1977 corn to $2.00 a bushel from $1.75 a bushel." If this is correct, and the present corn price is 140 cents per bushel, farmers will have an additional incentive to place their 1977 corn harvest in storage and make shipments when the price of corn increases, thereby avoiding shipment during the 9/15 - 12/15 period.

According, Complainants have not shown and cannot show from specific facts that they will incur substantial injury as a result of the protested seasonal rates. Prices of grains fluctuate sharply as a result of factors other than the level of rail rates. These include such diverse and uncontrollable elements as volume of domestic production, availability of storage facilities, harvest conditions in foreign countries, interest rates, and the weather. To attempt to identify a temporary freight increase as a crucial part of that pricing process is simply unrealistic.

III.

THE PRIVATE CAR EXEMPTION IS A LAWFUL PART OF A ONE YEAR EXPERIMENT.

The proposed increase on peak movements of grain in the South is admittedly an experiment. The proposal is published for one season only to gain experience with a novel form of ratemaking encouraged by the 4-R Act.

One of the areas where the seasonal rates will provide experience is in the role of private cars in the movement of grain. The proposed exemption of private cars from the seasonal rates is the result of compromise among the carriers which have different expectations of the role that private cars will, and should, play. The brief experiment should thus be allowed to go forward.

The Family Lines freely accept private cars for grain movement on a year round basis. The Family Lines believes that private cars will augment the railroad-owned fleet and thereby improve car supply for small shippers who need railroad-owned cars.

Southern does not accept private cars to the extent that Southern is first able to provide a railroad-owned car. In off-peak periods, Southern refuses private cars for loading unless a railroad-owned car will not be available within 48 hours. During times of car shortage, however (this period may be of shorter duration than the peak movement period of the rate adjustment), Southern does accept private cars for grain loading without restriction. Southern's view is that the railroad car fleet should be the fleet to be used on a year round basis and that the burden of idleness in the off-season should be borne by the private car owner.

These different philosophies were composed by the railroads in the present three-month experiment, applying seasonal grain rates to traffic moving in railroad-owned cars only. At the end of the season, the railroads will review the results to decide how to proceed in the future.

No discrimination against users of railroad-owned cars will result, because the owners of private cars have very different risks and responsibilities. In particular, the private car owner is forced to seek out loads for his equipment in the off-peak season, a burden which is not borne by the shipper in railroad-owned cars. Indeed, the Congress recently recognized the special status of privately-owned cars in the 4-R Act. There privately-owned coal cars are put in a class by themselves for purposes of car distribution, changing the long-standing judicial rule to the contrary. 49 U.S.C. §1(12).

We think that the need for this experiment is reaffirmed by the statements of the shippers themselves. Some of them condemn the private car exemption; others, such as Garvey, suggest that the carriers be *compelled* to accept private cars for grain loading. (Obviously, such compulsion could not be undertaken without a formal rulemaking proceeding). In view of the fact that private car shippers bear different burdens, that this is a short-lived experiment, and that the shippers and carriers alike are uncertain as to the effect of movement in private cars, there is nothing unlawful about the private car exemption.

IV.

THE PROPOSED SEASONAL RATES WILL NOT RESULT IN DIVERSION OF TRAFFIC.

As previously pointed out, the unregulated barge lines are able to virtually triple their rates between the off-season and the peak-season. No more graphic demonstration could be given of the inability of the

barge lines to supply extra equipment during the peak period. Thus the likelihood of diversion is small.

Just so the rail carriers suffer equipment shortages during the harvest season. The Verified Statements of Witnesses Wharton and Jones show that the railroads have been unable to supply all the cars demanded by shippers during harvest season in the past. It is apparent that shippers would have diverted traffic during the harvest season if they could have. For that reason the carriers are convinced that rates on grain can be substantially increased without material diversion.

The time when there is a threat of diversion is during the off-peak season. That is when the barges and motor carriers have extra equipment available. That is the reason why this proposed increase, partly a revenue producing measure, is not being applied uniformly the year round. Not only will the increase tend to level peak demand for rail cars somewhat, it will accommodate competitive realities by keeping rates at a minimum during the season when diversion is most likely.

V.

NO INTERTERRITORIAL DISCRIMINATION WILL RESULT.

Ever since the publication of the Big John rates in the mid-1960's, the salient characteristic of the rate structure on grain the South has been its low level.

The Commission acknowledged this fact earlier in the year.

> The Southeast enjoys a freight rate structure on feed grains which is lower than rates in Official Territory. . . .The competitively lower rail rates [sic] structure within the South and the innovative jumbo hopper cars which made it possible are set forth in the *Big John* case, *Grain in Multiple-Car Shipments — River Crossings to So.,* 325 I.C.C. 752 (1965); 321 I.C.C. 582, 1963; and 318 I.C.C. 641 (1963).
>
> *Feed Grains to New England,* Docket 35786 (slip p. 9 February 2, 1977).

The favorable rate structure in the South is demonstrated by the numerous petitioners in Indiana, Illinois, Iowa, Kansas, and other states outside the South who concede that they ship large volumes of grain into the South. Because the rates in the South are so low, the proposed increases will not work discrimination.

A somewhat similar situation occurred in Ex Parte 318, where the West did not participate in a 7% increase on grain which was applied in the South. No discrimination between territories was found in that case. (The Western rates later caught up with those in other territories in a subsequent general increase).

For these reasons, the proposed increase will not cause interterritorial discrimination.

VI.

L&N GRAIN UNIT TRAIN RATES

Protestants allege that L&N has published reduced

rates on 65-car movements of grain to commence on the same day that the demand-sensitive rates become effective. This is somewhat of a misrepresentation. L&N has not previously published unit train rates and the publication to which reference is made is an initial movement of L&N into the grain unit train tariff area. First it should be clearly understood that the unit train rates apply only in private cars on which no mileage allowance is paid. The publication of the unit train rates by L&N at this particular time is not inconsistent with the publication of the demand-sensitive rates. To the contrary, the publication of the unit train rates was made to accomplish the same end as the end desired through the publication of the demand-sensitive rates. The increased efficiency and utilization of cars through the use of unit train movements has been recognized by the Commission. Increased efficiency and broadening of the ability to carry more grain is the ultimate goal of L&N.

VII.

THE RAIL CARRIERS DO NOT HAVE MARKET DOMINANCE AS TO GRAIN AND SOYBEANS

Under new §1(5)(b) of the Interstate Commerce Act, the proposed rates cannot be found unreasonable unless the carriers have market dominance over the traffic involved. Under §15(8)(d)(ii), the rates cannot be suspended unless the objecting parties prove that they are likely to prevail on the merits. The parties objecting to the seasonal rate proposal have not proven market dominance, and thus the proposal cannot be suspended as exceeding a maximum reasonable level.

The Commission's market dominance rules ask the carriers to supply certain information to the extent available. 49 C.F.R. §1109.1. The information available is as follows:

(1) Description of involved commodities and seven digit STCC numbers.

STCC NO.	COMMODITY DESCRIPTION
0113110	Barley
0113210	Corn (not popcorn), in the ear, dried inc. not shelled
0113215	Corn (not popcorn), shelled, dried
0113310	Oats
0113410	Rice, rough
0113510	Rye
0113615	Darso grain
0113620	Durra
0113625	Feterita grain
0113630	Grohoma grain
0113635	Hegari (higera) grain
0113640	Kafir (kaffri) (kafir (kaffir) corn)
0113645	Kaoliang grain
0113650	Kalo grain
0113655	Milo (milo maize)
0113660	Shallu grain
0113665	Shrock grain
0113670	Egyptian wheat
0113690	Sorghum grain, nec. aao. sorghum grains, in mixtures
0113710	Wheat
0113720	Wheat, durum, amber or red
0113910	Buckwheat
0113915	Spelt
0113920	Emmer
0113925	Millet
0113930	Grain screenings, unground
0113990	Grain, nec
0114410	Soybeans, dried
0114415	Soybeans, fresh

(2) The increase involves rates throughout SFA territory.

(3) The variable cost of the service to which the rate applies was given by Witness Spuhler in his Verified Statement attached to the carriers' Justification Statement.

(4) The rates in question were considered before a rate bureau pursuant to §5(b) of the Interstate Commerce Act, as explained by Witness Thompson in his Verfied Statement attached to the railroads' Justification Statement.

(5) The exact tonnage of the involved traffic during 1976 cannot be determined in the short time available because of duplication in the QCS Reports. Grain and grain products traffic in the South fluctuated between 32.5 and 39.2 million tons in the years 1966-1974.

(6) Transportation of grain by other modes is generally by exempt truck operations and barge carriers. Accordingly, the carriers do not know the names of these competitors. Only sketchy data are available as to the tonnage transported, and no information is at hand as to the rates charged. The Petition for Suspension filed by Early & Daniel shows that there has been a substantial increase in barge movement from Cincinnati, and the Verified Statement of Witness Barnes

filed in Ex Parte 270 (Sub 9) on March 1, 1976, shows that 1.9 million tons of grain moved by barge on the Tennessee River during 1974. Together these figures total 3.3 million tons a year, or almost 10% of the total volume moving by rail. When grain moving through other ports on the Ohio and Mississippi Rivers is considered, together with the vast volume moving by exempt trucking, it becomes apparent that rail carriage amounts to less than 70% of the involved traffic. This conclusion is confirmed by the numerous protestants (for example, Archer Daniels Midland, Garvey, Inc., the Virginia Commissioner of Agriculture and Commerce, and Bartlett & Co.).

(7) The SFA carriers have taken the following increases on grain products in the last two years:

Increase	Date	Amount
Ex Parte 313	10-11-75	2½% (Tariff Table G)
Ex Parte 318	3-21-76	7% (Tariff Table G)
Ex Parte 330	10-7-76	7% (Tariff Table G)
Ex Parte 336	1-7-77	4% (Tariff Table G)

In view of these facts, no rebuttable presumption of market dominance arises under paragraph (g) of the market dominance rules. As explained above, the railroads have not been shown to handle 70% or more of the involved traffic during the preceding year. Indeed, competition — bitter competition — among all three major modes for grain traffic is notorious and has often been acknowledged by the Commission.* Witness Spuhler showed that the rates in issue will

*/ The *potential* for movement by barge and truck is demonstrated by history. See the first Big John decision, 318 I.C.C. 641, 668 (1963). There it is noted that the railroads carried only *20%* of the grain moving in the South in 1959.

not exceed variable cost by 60% or more; Appendix B to his Exhibit 3 attached to the railroads' Justification Statement shows a revenue-cost ratio of 99-128% for the existing rates. This means that the 20% increases will produce revenue exceeding variable cost by only 19-52%. Finally, the evidence of affected shippers or consignees with respect to substantial investment in rail related equipment or facilities has been sketchy at best. It is true that some shippers have invested in rail related facilities. But the standard of the Commission's rules is that the investment must *prevent* or *make impractical* the use of another carrier. In only one or two instances do the objecting parties even allege that their investment has prevented or made impractical the use of rail facilities. Indeed, the notorious competition for grain traffic by barges and trucks demonstrates that use of competing modes is both practical and probable.

For these reasons the carriers do not have market dominance as to the involved grain movement, and the proposed rates cannot be suspended as unreasonably high.

It is especially irritating to have a protestant boldly proclaim the lack of need for any increase in railroad revenue because two major Southern carriers have reported a favorable revenue position in the last few accounting quarters. This showing ignores the low rate of return for those two railroads when compared to other industry. In the 1977 Railroad Book of Facts the AAR reports at page 20 that the Southern District railroads rate of return on net investment was only 4.62 percent. The highest rate of return enjoyed since 1962 has been 4.73 percent. The coordinator's

report in Ex Parte 271, dated August 20, 1976, expresses the opinion that the overall target of between 6 and 10 percent for railroad rate of return on investment is not unreasonable.* Most recently in the statement of consulting economist J. Rhoads Foster, submitted by the railroads in Ex Parte 338, it was determined that the railroads need and should be allowed a rate of return on net investment of at least 11 percent. Innovation, and resultant improved public services, can only be attained if the railroads are permitted to function under the mandate of Congress expressed in the 4-R Act and improve their economic condition in the industrial community. It should be noted that none of the protestants submitted balance sheet to show the degree of harm that would be suffered by them if the protested schedules became effective.

CONCLUSION

It is appropriate, in conclusion, for railroads, shippers and the Commission to pause from argument and note the content of Congressman Rooney's remarks concerning the conference report on Senate Bill S. 2718, submitted in House and agreed to on January 28, 1976.

> [T]he legislation before you is a symbol of the cooperation between the Congress and the Executive that can occur when legislation is necessary for this Nation's well-being. The Congress did not get every provision exactly as it wanted, nor did the executive. However, this legislation represents an excellent piece of rational, well-constructed legislation which will change the transportation policy of this Nation

*/ Cited at 345 ICC 1492 at 1605.

> for the remainder of this century. This legislation is a first in many areas. Those sections concerning the regulation of the rail industry are the culmination of 12 years of work by the Congress. This reform represents basic changes in the 19th Century System of Federal regulatory policy. The change is basically from a structure protecting cartels to one providing competition and eventually providing for the development of additional services for the public.*

Respectfully submitted,

Bates B. Bowers

BATES B. BOWERS,
Chairman, Southern Freight Association,
151 Ellis Street, N. E.,
Atlanta, Ga. 30303

Dated: September 8, 1977

CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of Sept., 1977, served a copy of the foregoing reply by U. S. first class mail, postage prepaid, upon all parties of record.

Bates B. Bowers

BATES B. BOWERS.

*/ Congressional Record — House, H 403, January 28, 1976.

REPLY VERIFIED STATEMENT
OF
Francis M. Spuhler

My name is Francis M. Spuhler. I am employed as Senior Cost Analyst with the Southern Freight Association located at 1920 L Street, N. W., Washington, D. C. I am the same Francis M. Spuhler who submitted a verified statement (Exhibit III) in the Justification Statement that accompanied the tariff supplements containing the demand-sensitive rates under protest.

In that statement I stated that the proposed adjustment is not based upon costs. Actually, the proposed adjustment should help *eliminate* the economic waste of having very expensive equipment under-utilized for most of the year and inefficiently utilized during peak periods. Other economic factors such as increased employee overtime expense, hiring and training of extra crews, locomotive utilization during peak periods, costs of congestion in yards and port facilities, tie-ups on main-line operations, and excessive switching due to delays in unloading of cars at consignee facilities are also factors which would have to be considered in any cost study involved in peak-period movements. This kind of cost study would be very costly and lengthy, in that a full study year would be needed, and, of necessity, would involve many arbitrary judgment factors. (e.g., that which would be normal operating practice vs. peak-period experience would be difficult to specifically determine). Based upon my experience with in-depth cost studies on other commodities, I can state that such a study involving the entire scope of peak-period (9/15 - 12/15) movements

of grain would disclose much greater costs being allocated to grain traffic than would be assigned if the commodity flow was more evenly distributed over the year.

Witness Freeman K. Buxton on behalf of Bob Bergland, Secretary of Agriculture of the United States, shows costs and rate comparisons on single car movements of 190,000 pounds of grain in covered hopper cars as of January 1, 1977 for Southern Region Carriers.

Certain of the rates shown in his Exhibit I are incorrect as they are not applicable on whole grain. They apply on certain grain *products* which are not issue in this proceeding. Shown below are Witness Buxton's rates in Column A and the correct rates on whole grain as shown in Column B:

	Rate at X-336 level		Proposed Rate	
	A	B	A	B
From Hopkinsville, Ky.	144.5(s)	29.8	173.5(s)	35.7
	(m)	28.5	(m)	34.2
To Marks, Mississippi				
From Louisville, Ky.	128 (s)	32.9	153.5(s)	39.5
	(m)	27.6	(m)	33.1
To Rome, Ga.				
From Hopkinsville, Ky.	98 (s)	47.0	117.5(s)	56.4
	(m)	43.7	(m)	52.3
To Pascagoula, Miss.				

A — As shown in USDA Exhibit I
B — SFTB-FT 972-F Items 1240-A, 15750, 16475, 32,880
(s) Single car
(m) Multi-car

Obviously had Witness Buxton utilized the proper rates, he would not have arrived at the high ratios of rate to cost that he shows in Column 5. I stand upon the rate cost ratios shown in the Justification Statement as being correct.

VERIFICATION

CITY OF WASHINGTON)
) ss.
DISTRICT OF COLUMBIA)

FRANCIS M. SPUHLER, being duly sworn, deposes and says that he has read the foregoing statement and knows the contents thereof, and that the same are true as stated.

s/ Francis M. Spuhler

Subscribed and sworn to before me this 8th day of September, 1977.

/s/ Betty Mae Smith
Notary Public

My Commission expires on the 14th day of October, 1978.

THERE IS NO FOURTH SECTION DEPARTURE IN CONNECTION WITH RATES PUBLISHED IN ITEM 32880 OF SFTB 972-F, ICC S-1359, WITH RESPECT TO ORIGINS OF METROPOLIS, ILL. AND REEVESVILLE, ILL.

Item 6170000-Page 82 of National Rate Basis Tariff 1-C, ICC S-1127, (Standard Point Location Code 399488), provides Brownfield, Ill., rate basis for Reevesville, Ill. Supplement 57 to National Rate Basis

Tariff 1-C, ICC S-1127, Item 2.01-D (Page 2) provides under Column 1 (New Basis) Brownfield, IL., and under Column 2 (Former Basis) Simpson (Johnson Co.), IL. Under "Explanation of Notes", Item 2.01-D, the following is provided:

> **"1. Due to additions, changes and eliminations in this tariff, certain base points published in tariffs making reference to this tariff are no longer published in this tariff. Where new basis as shown in Column 1 are absent from tariffs referring to this tariff, apply rates from or to the former basis as shown in Column 2".**

The former basis (Column 2) Simpson (Johnson Co.), IL, is provided for in Section 2 of SFTB Tariff S-1011-A, ICC S-100 (Page 551), and in view of tariff provisions outlined above contained in Item 2.01-D, Supt. 51, National Rate Basis Tariff 1-C, ICC S-1127, rates are properly applicable between both Reevesville and Metropolis, Ill. and Marks, Miss., consequently, the demand-sensitive rates on whole grain and soybeans will likewise have application between Reevesville and Metropolis, Ill. and Marks, Miss. and will not result in fourth section departures.

Reevesville, Ill., is the northernmost point on the line of the Illinois Central Gulf Railroad north of Metropolis, Ill., from and to which rates have application in SFTB Tariff 972-F, ICC S-1359. Grain originating on the line of the Illinois Central Gulf north of Reevesville, Ill., moves on combination rates, the aggregate of which is greater than will result from demand-sensitive rates to be applicable at Metropolis, Ill. Therefore, no fourth section departure will result at any point on the line of the Illinois Central Gulf Railroad north of Metropolis, Ill.

VERIFICATION

CITY OF WASHINGTON)
) ss.
DISTRICT OF COLUMBIA)

R. E. THOMPSON, being duly sworn, deposes and says that he has read the foregoing statement and knows the contents thereof, and that the same are true as stated.

s/ R. E. Thompson

Subscribed and sworn to before me
this 8th day of September, 1977.

/s/ Betty Mae Smith
Notary Public

My Commission expires on the 14th day of October, 1978.

EXHIBIT

COMPARISON OF DOMESTIC AND EXPORT SHIPMENTS OF CORN AND SOYBEANS ORIGINATED IN GEORGIA BY L&N AND SCL RAILROADS DURING 1976

Destination	Number of Cars
Alabama, except Mobile	412
Mobile, for export	2,943
Arkansas	3
Florida	2,753
Georgia	1,198
Iowa	4
Kentucky	3
Louisiana, except New Orleans	70
New Orleans, for export	29
Minnesota	1
Mississippi, except Pascagoula	292
Pascagoula, for export	1,907
North Carolina	150
South Carolina, except Charleston	5
Charleston, for export	10
Tennessee	222
Virginia, except Norfolk	3
Norfolk, for export	4
TOTAL CARS ORIGINATED	10,021
TOTAL CARS EXPORTED	4,893

EXHIBIT

EMBARGO NOTICES ISSUED DURING 1976 AT POINTS IN SOUTHERN TERRITORY ON SHIPMENTS OF GRAIN

EMBARGO NUMBER	EFFECTIVE DATE	CANCELLED DATE	APPLICATION
7601	1-6-76	1-12-76	All carload shipments of bulk grain and soybeans at Reserve, LA for account of Bayside Elevator due to accumulation and car delay.
7603	1-12-76	2-13-76	All carload shipments at Pascagoula, MS for account of Louis Dreyfus Corp. (Jackson County Elevator) due to labor difficulty and an impending strike.
7606	2-19-76	3-26-76	All shipments of soybeans at Mobile, AL for account of Public Grain Elevator-Alabama State Docks due to accumulation and car delay.
7630	9-7-76	9-14-76	All carload shipments of grain and soybeans at Charleston, S.C. for account of South Carolina Farm Marketing Bureau Grain Elevator due to accumulation and car delay.

EMBARGO NUMBER	EFFECTIVE DATE	CANCELLED DATE	APPLICATION
7639	10-8-76	10-11-76	All carload shipments of corn at Mobile, AL for account of Public Grain Elevator-Alabama State Docks due to accumulation and car delay.
7643	10-20-76	11-2-76	All carload shipments of grain and soybeans at Charleston, S.C. for account of South Carolina Farm Bureau Marketing Association Grain Elevator due to accumulation and car delay.
7644	10-20-76	11-2-76	All carload shipments of grain and soybeans at Gainesville, GA for account of Cargill, Inc. due to accumulation and car delay.
7647	10-26-76	11-18-76	All carload shipments of corn at Mobile, AL for account of Public Grain Elevator-Alabama State Docks due to accumulation and car delay.
Amendment #1 to 7647	11-3-76	11-18-76	Embargo amended to include soybeans.

EMBARGO NUMBER	EFFECTIVE DATE	CANCELLED DATE	APPLICATION
7648	11-11-76	11-16-76	All inbound loads at Memphis, TN for account Cargill Corn Syrup and Starch Division due to accumulation.
7649	11-11-76	11-26-76	All inbound shipments of soybeans at Memphis, TN for account Cargill, Inc. Domestic Soybean Crushing Division due to accumulation and car delay.
7650	11-11-76	11-22-76	All inbound shipments of corn at Memphis, TN for account of Pillsbury Co. Island Terminal due to accumulation and car delay.
7651	11-16-76	12-2-76	All shipments of soybeans at Chattanooga, TN for account of Central Soya and Company, Inc. due to accumulation and car delay.
7653	11-18-76	12-2-76	All shipments of corn and soybeans at Mobile, AL for account of Cargill, Inc, due to car delay.

EMBARGO NUMBER	EFFECTIVE DATE	CANCELLED DATE	APPLICATION
Amendment #1 to 7653	11-30-76	12-2-76	Embargo amended to exclude soybeans.
7656	11-24-76	11-29-76	All carload shipments of soybeans at Pascagoula, MS for account of Louis Dreyfus Corp. (Jackson County Elevator) due to accumulation and car delay.

SOURCE: Association of American Railroads, Operations and Maintenance Department, Car Service Division, Embargo Notices for 1976.

ICC - 29

Supplementary Petition
for Rejection of Tariffs
of Archer Daniels Mid-
land Company
Conagra, Inc.
Dixie Portland Flour
Mills, Inc., Seaboard
Allied Milling Corp.
ADM Milling Co.

Sept. 12, '77

THIS MATTER REQUIRES IMMEDIATE ACTION

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Suspension And Fourth Section Board No. 67123
Office Of Proceedings No. 36663

SUPPLEMENTARY PETITION FOR
REJECTION OF TARIFFS

ARCHER DANIELS
MIDLAND COMPANY
CONAGRA, INC.
DIXIE PORTLAND
FLOUR MILLS, INC.
SEABOARD ALLIED
MILLING CORP.
ADM MILLING CO.

By John H. Caldwell
Peter A. Greene
Neal A. Jackson

Their Attorneys

Of Counsel:

CALDWELL & GREENE
900 17th Street, N.W.
Washington, D.C. 20006

Dated: September 12, 1977

THIS MATTER REQUIRES IMMEDIATE ACTION

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Suspension And Fourth Section Board No. 67123
Office Of Proceedings No. 36663

SUPPLEMENTARY PETITION FOR
REJECTION OF TARIFFS

Archer Daniels Midland Company, ADM Milling Co., ConAgra, Incorporated, Dixie Portland Flour Mills, Inc., and Seaboard Allied Milling Corp., pursuant to Rule 102 of the Commission's General Rules of Practice, here submit their supplementary petition for rejection of tariffs. This petition is supplementary to that previously submitted by these protestants on September 6, 1977.

Our earlier petition described a Fourth Section departure under the proposed rates at Metropolis, Illinois, on ICG. This was illustrative and not exclusive. Since discovery of that illustrative departure, other unauthorized Fourth Section departures have come to our attention. These additional violations of Section 4(1) are described in Appendix A hereto. No relief has been requested or obtained for these departures, which underscore the unlawfulness of the rail penalty rate proposal.

WHEREFORE, the Commission must reject the subject tariffs.

Respectfully submitted,

ARCHER DANIELS
MIDLAND COMPANY
CONAGRA, INC.
DIXIE PORTLAND
FLOUR MILLS, INC.
SEABOARD ALLIED
MILLING CORP.
ADM MILLING CO.

By John H. Caldwell

Peter A. Greene
Neal A. Jackson

Their Attorneys

Of Counsel:

CALDWELL & GREENE
900 17th Street, N.W.
Washington, D.C. 20006

Dated: September 12, 1977

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of September, 1977, I served copies of this petition, including its appendices, upon Bates B. Bowers, Chairman, Southern Freight Association, and counsel Charles N. Marshall and Wandaleen Poynter, by first class mail, postage prepaid, in accordance with the General Rules of Practice of the Interstate Commerce Commission.

/s/ John H. Caldwell

TYPICAL ILLUSTRATIVE* FOURTH SECTION ORIGIN AND DESTINATION
DEPARTURES WHICH WOULD RESULT FROM THE EFFECTIVENESS OF THE PROPOSED RATES

A. Origin Departures:

More Distant Origin			Intermediate Origin			Destination	Tariff
Stations	Mileage	Rate	Stations	Mileages**	Rate		References***
Louisville, Ky	765.9	977.5	Buechel, Ky	751.1	1173.0	Emerson, Va.	16650
Cincinnati, Oh	788.0	944.0	Richwood, Ky	772.5	1133.0	Emerson, Va.	16325

Destination Departures:

Origin	Intermediate Destination			More Distant Destination			Tariff
	Stations	Mileage**	Rate	Station	Mileage**	Rate	References***
Cincinnati, Oh	Danville, Va.	674.2	978.5	Emerson, Va.	788.0	944.0	16325
Evansville, Ind.	Danville, Va.	769.2	1176.5	Emerson, Va.	883.0	110.5	17400
St. Louis, Mo.	Danville, Va.	920.9	1350.5	Emerson, Va.	1034.7	1276.5	19400

* The illustrations set forth herein are merely representative of hundreds which could be cited. For example, every SRS station in Illinois or Indiana taking as a rate basis a headline point in Section 2 of SFTB 1011-A will have destination departures on traffic moving to Danville, Virginia, versus Emerson, Virginia.

** All mileages are short rate mileages over the lines of Southern Railway System.

*** Tariff references are to number of applicable items of SFTB 972-F, ICC S-1309.

ICC - 31

Interstate Commerce Commission Order Denying Petition for Rejection

Sept. 14, '77

(Service Date Sep. 14, 1977)

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D.C. on the 14th day of September, 1977.

No. 36663

REJECTION OF TARIFF MATTER-DEMAND SENSITIVE RATES GRAIN SOUTHERN FREIGHT ASSOCIATION, AGENT

It appearing, That Southern Freight Association, Agent, has filed conversion table supplements to each of three tariffs for the purpose of increasing by 20% rates and charges on grain and related products to become effective September 15, 1977 to apply during the peak period for the movement of grain;

It further appearing, That Archer Daniels Midland Company; Conagra, Inc.; Dixie Portland Flour Mills, Inc.; Seaboard Allied Milling Corp., and ADM Milling Co., have filed a petition, as supplemented, for rejection of the said supplements alleging that the said supplements alleging that the said supplements violate Section 4 of the Interstate Commerce Act; that the publications also violate Sections 1, 2, 3 and 15(17) of the Act as described in a verified complaint filed contemporaneously with the petition.

It further appearing, That no valid reason exists for the rejection of the tariff publication matter; and good cause appearing therefore:

It is ordered, That the petition for rejection be, and it is hereby, denied.

This is not a major Federal action significantly affecting the quality of the human environment with the meaning of the National Environmental Policy Act of 1969.

By the Commission, Division 2, Commissioners Murphy, Gresham and Clapp (Commissioner Clapp did not participate)

H. G. Homme, Jr.
Acting Secretary

(SEAL)

ICC - 32

Interstate Commerce Commission Order Declining Petitions for Suspension and Investigation

Sept. 14, '77

ORDER

As a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 14th day of September, 1977.

No. 36663[1]

DEMAND SENSITIVE RATES ON GRAIN AND SOYBEANS — SOUTHERN FREIGHT ASSOCIATION TERRITORY

This order concerns the following rate tariff schedules:

SOUTHERN FREIGHT ASSOCIATION, AGENT:

Supplement 23 to Tariff 972-F, I.C.C. S-1359
(Incentive Grain Tariff)
Supplement 201 to Tariff 988-A, I.C.C. S-909
(Southern Export Grain Tariff)
Supplement 137 to Tariff 908-B, I.C.C. S-999
(Southern Grain Tariff)
and any other related supplements.

Generally, these proposals involve a 20 percent increase on grain movements in railroad-owned cars between September 15 and December 15, 1977, inclusive. The proposals apply to barley, buckwheat, corn, corn screenings, grain sorghums, oats, rye, wheat, and soybeans from, to and between points in the Southern Territory, and Indiana and Illinois. See Appendix A for a listing of the STCC numbers.

The schedules were published by Southern Freight

1/ Suspension No. 67123

Association (SFA) pursuant to the regulations (49 CFR § 1109.10, as amended) established by the Commission in Ex Parte No. 324, *Standards and Expeditious Procedures for Establishing Railroad Rates Based on Seasonal, Regional, or Peak-Period Demand for Rail Service,* __________ I.C.C. __________ decided January 28, 1977.

Although optional under the regulations, a justification statement accompanied the tariff publication. Little cost evidence, also optional under the regulations, was offered. However, SFA did indicate that an incentive was necessary to help level-out the demand for rail cars during the peak season but that lower off-peak rates were *not* feasible since grain rates are generally depressed in the south.

More than 20 parties protested the proposal and assailed the justification statement. The principal objections were (1) the proposal is unreasonable and excessive and in violation of section 1 (5) of the Interstate Commerce Act (the Act); (2) the proposal results in unjust discrimination, undue preference and prejudice in violation of sections 2 and 3 (1) of the Act; (3) the proposal does not meet the goals set out in Ex Parte No. 324. SFA replied to these protests.

Several protestants also claim that the proposal would result in unauthorized departures from the long-and-short haul clause of Section Four of the Act. They offer rate examples purporting to demonstrate these departures. In rebuttal, respondent presents argument and tariff citations to disprove protestants' claims. In addition, respondent states that it intends to avoid any potential Section Four violations and it

commits itself to making tariff changes to remove any of these called to its attention. The evidence offered to support the alleged violations of Section Four of the Act does not warrant suspension of this proposal. However, respondents are admonished to take prompt action to remove violations of the long-and-short haul provision of Section 4(1) of the Act, if any, in connection with inter-territorial and intra-territorial movements that may be caused by application of demand-sensitive rates on whole grains between points in southern territory.

Section 15(8)(d)(ii) of the Act conditions the Commission's power to suspend rates in excess of a just and reasonable maximum on a finding of market dominance. Some protestants offered evidence of market dominance in certain situations. However, there has been no attempt to demonstrate the existence of market dominance throughout the entire affected area. To the extent that market dominance may exist, we nevertheless decline to exercise our authority to suspend this experimental rate proposal, which appears to be in general conformity with the goals of the Railroad Revitalization and Regulatory Reform Act of 1976 (4-R Act), because we are not convinced that protestants have sustained their burden on the section 1(5) assertions.

The section 2 and 3 (1) issues are based on the applicability of the proposal, notably the exclusion of movements in private cars. The Commission has long recognized the justification for disparate treatment of private equipment. See, for example, *Switching at St. Louis and East St. Louis,* 120 I.C.C. 216, 221 (1926).

Other section 2 and 3 (1) matters are the result of the possibly overbroad scope of the proposal. However, insufficient evidence is available to warrant suspension on the basis of such assertions. The adverse effects predicted by protestants and the benefits advanced by SFA are speculative. This is an experimental rate increase and there is no way to predict with certainty the overall impact of the proposal.

We will order the respondent carriers to make weekly reports to this Commission demonstrating the effect of the schedules. This should not prove burdensome to the carriers since they already provide a large portion of the information to the Association of American Railroads. We stress that this action should not be viewed as a measure that will be used in future Ex Parte No. 324 filings. It is only being used here because of the unique circumstances and the broad application of the schedules.

The Commission was directed to establish a regulatory climate conducive to rate innovation and experimentation by the Congress in the 4-R Act. Ex Parte 324 was a direct result of that directive.

This is the first proposal filed pursuant to Ex Parte No. 324 regulations. The complaint sections of the Act protect, to a certain extent, the interests of those who may be adversely affected. Weighing the contentions before us and the clear Congressional purpose to permit experimental ratemaking, we will permit this temporary adjustment to become effective.

It is ordered, that the respondent carriers file, with

the Secretary of this Commission, reports relating the effect of the schedules in terms of (1) car utilization (filled and unfilled orders by car types); (2) grain movements based on specific commodities and the stations or origin and destination; (3) carloadings by car type and commodity; (4) evidence of diversion; and (5) evidence of shipper rescheduling. Each weekly report shall be filed no later than two weeks after the end of the report week. A week, for the purpose of this proceeding, shall run from Thursday to Wednesday, inclusive. This requirement is subject to later refinement or modification by this Commission. Since several protestants raise allegations concerning an alleged disparate treatment between railroad-owned and privately-owned equipment, we will, out of caution, direct our Bureau of Investigations and Enforcement and Bureau of Operations to closely monitor this matter.

By the Commission. (Vice Chairman Clapp and Commissioner Christian did not participate.)

H. G. HOMME, JR.
(SEAL) Acting Secretary

APPENDIX A

STCC NO.	COMMODITY DESCRIPTION
0113110	Barley
0113210	Corn (not popcorn), in the ear, dried inc. not shelled
0113215	Corn (not popcorn), shelled, dried
0113310	Oats
0113410	Rice, rough
0113510	Rye
0113615	Darso grain
0113620	Durra
0113625	Feterita grain
0113630	Grohoma grain
0113635	Hegari (higera) grain
0113640	Kafir (kaffri) (kafir (kaffir) corn)
0113645	Kaoliang grain
0113650	Kalo grain
0113655	Milo (milo maize)
0113660	Shallu grain
0113665	Shrock grain
0113670	Egyptian wheat
0113690	Sorghum grain, nec. aao. sorghum grains, in mixtures
0113710	Wheat
0113720	Wheat, durum, amber or red
0113910	Buckwheat
0113915	Spelt
0113920	Emmer
0113925	Millet
0113930	Grain screenings, unground
0113990	Grain, nec
0114410	Soybeans, dried
0114415	Soybeans, fresh

ICC - 33

Southern Freight Association Reply to Supplementary Petition for Rejection of Tariffs (ICC-29)

Sept. 13, '77

THIS MATTER REQUIRES IMMEDIATE ACTION

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Suspension and Fourth Section Board No. 67123
Office of Proceedings No. 36663

REPLY TO
SUPPLEMENTARY PETITION FOR
REJECTION OF TARIFFS

Charles N. Marshall
P. O. Box 1808
Washington, D.C. 20013

Attorney for SFA
Railroads

Dated: September 13, 1977

REPLY TO
SUPPLEMENTARY PETITION FOR
REJECTION OF TARIFFS

SUSPENSION BOARD CASE No. 67123

The Southern Freight Association Railroads hereby reply to the Supplementary Petition for Rejection of Tariffs filed by Archer Daniels Midland Company, et al., on September 12.

The Supplementary Petition does not present evidence of an actual violation of §4 and does not give cause for the tariffs in question to be rejected.

The examples given in the Supplementary Petition involve possible movements of grain from Official Territory border points to Official Territory destinations through Southern Territory. The Commission has long recognized that these "outside" territory situations exist, and it has routinely granted relief from §4 violations under such circumstances. See for example *Class Rates at Points East of Rocky Mountains*, 308 I.C.C. 293 (1959). In fact, to the extent that scale rates and point-to-point rates based on scale rates may apply in the present publication the Commission has already authorized outside territory relief in Supplemental Fourth Section Order 18982 (April 21, 1960).

Moreover, a violation of §4 requires freight to move between the points in question and the carrier to "charge" or "receive" compensation for that movement. The Supplementary Petition does not allege that traffic moves between the points in question. It is the carrier's intention, of course, to avoid even potential violations of §4, and as any of these are called to our attention, steps will be taken to change the tariffs in such a way as to remove any possibility of a Fourth Section violation actually occurring.

There is a great deal to be gained from the present carrier experiment in seasonal rates. The Commission itself noted in Ex Parte 324 that seasonal rate experimentation should be encouraged. In that Report, establishing the Commission's rules for seasonal

rates, the Commission noted that §4 difficulties appeared to have discouraged carrier innovation in the past. The Report states that it should be easier for the carrier to publish seasonal rates in the future. (Slip, pp. 39-40, January 28, 1977).

WHEREFORE, the SFA Railroads ask that the Supplementary Petition for Rejection of Tariffs be denied.

Respectfully submitted,

/s/ Charles N. Marshall

Dated: September 13, 1977

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of September, 1977, I have served copies of this Reply by first class mail, postage prepaid, upon John H. Caldwell, Peter A. Greene, and Neal A. Jackson.

/s/ Charles N. Marshall

CC8 - 10

Court Order Temporarily Staying Interstate Commerce Commission Order of September 14, 1977 (ICC-32) and Enjoining Respondents from Permitting Tariffs from Becoming Effective.

Sept. 14, '77

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

77-1729 September Term, 1977

(Filed September 14, 1977, Robert C. Tucker, Clerk)

Seaboard Allied Milling Corp.,
Archer Daniels Midland Company,
ADM Milling Co., Conagra, Inc.,
and Dixie Portland Flour Mills,
Inc.,

Petitioners,

vs.

Interstate Commerce Commission
and United States of America,

Respondents.

Petition for Review of an Order of the
Interstate Commerce Commission.

Before: WEBSTER and HENLEY, Circuit Judges

For cause shown it is now here ordered that the order of the Interstate Commerce Commission entered September 14, 1977, pertaining to SFA Tariff Supplements 201, 137 and 23 to SFTB Tariff Nos. 988-A (I.C.C. S-909), 908-B (I.C.C. S-999), and 972-F (I.C.C. S-1359) is temporarily stayed and respondents are enjoined from permitting the subject rate tariffs from becoming effective until further order of the court.

It is further ordered that counsel for respondents may have to and including September 21, 1977, to respond to petitioners' motion for stay.

September 14, 1977

ICC - 34

ICC Order Reopening
Proceeding Solely to
Comply with Court Order

Sept. 15, '77

ORDER

INTERSTATE COMMERCE COMMISSION

No. 36663

DEMAND SENSITIVE RATES ON GRAIN AND SOYBEANS — SOUTHERN FREIGHT ASSOCIATION TERRITORY

The Southern Freight Association, Agent, on behalf of its member carriers has filed the following schedules:

SOUTHERN FREIGHT ASSOCIATION, AGENT:

Supplement 23 to Tariff 972-F, I.C.C. S-1359 (Incentive Grain Tariff)
Supplement 201 to Tariff 988-A, I.C.C. S-909 (Southern Export Grain Tariff)
Supplement 137 to Tariff 908-B, I.C.C. S-999 (Southern Grain Tariff)
and any other related supplements.

These schedules set forth increased freight rates on barley, buckwheat, corn, corn screenings, grain sorghums, oats, rye, wheat, and soybeans and were the subject of the Commission's orders in No. 36663, Demand Sensitive Rates on Grain and Soybeans — Southern Freight Association Territory, of September 14, 1977.

The United States Court of Appeals For the Eighth Circuit in No. 77-1729, Seaboard Allied Milling Co. v. United States of America and Interstate Commerce Commission, has stayed the Commission's order and

directed the Commission to prevent the above-described schedules from becoming effective until further order of the Court. Accordingly, pursuant to the directive of the Court, the schedules placed in issue in No. 36663 will not be allowed to become effective.[1]

IT IS ORDERED:

1. That this proceeding is reopened for the purpose of complying with the order of the Court;

2. Solely in obedience to the Court's order, as above described, the operation of the considered schedules is hereby, deferred until further notice.

By the Commission, Acting Chairman Clapp. Dated at Washington, D. C., September 15, 1977.

H. G. Homme, Jr.
(SEAL) Acting Secretary

1/ The Commission is presented seeking an emergency hearing on this matter.

CC8 - 40

Court Order Dissolving
Temporary Stay

Sept. 22, '77

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 77-1729

Seaboard Allied Milling Corp.,
Archer Daniels Midland Company,
ADM Milling Co., Conagra, Inc.,
and Dixie Portland Flour Mills,
Inc.,

Petitioners,

v.

Interstate Commerce Commission
and United States of America,

Respondents.

PETITION FOR REVIEW OF AN ORDER OF THE INTERSTATE COMMERCE COMMISSION.

Filed: September 22, 1977

Before MATTHES, Senior Circuit Judge, WEBSTER and HENLEY, Circuit Judges.

ORDER

On September 14, 1977 petitioners filed a petition for review of the Order of the Interstate Commerce Commission entered on September 14, 1977, in Suspension and Fourth Section Board Case No. 67123, and Office of Proceedings Docket No. 36663. Petitioners simultaneously filed a motion for stay or other injunctive relief with respect to said order. On September 14 we granted a temporary stay and granted respondents until September 21, 1977 to respond.

In the interim several motions have been filed on behalf of various interested parties for leave to intervene. All pending motions to intervene are hereby granted.

In the order of the Interstate Commerce Commission sought to be reviewed, the Commission refused to suspend the September 15, 1977 effective date of proposed rate tariffs published by the Southern Freight Association increasing freight rates on railroad owned cars approximately 20% from September 15, 1977 to December 15, 1977. These so-called demand-sensitive rates were based on §202(d) of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. §15(17). In opposing the tariffs and in support of suspension thereof by the Commission, petitioners asserted, *inter alia*, that the new rates violated the longhaul-shorthaul provisions of 49 U.S.C. §4(1), as well as §§1(5), 1(6), 1(11) to 3(1) and 15(17) of the Interstate Commerce Act. These contentions were rejected by the Commission.

Respondents contend that this Court is without jurisdiction to grant the stay, relying primarily upon *Arrow Transportation Co. v. Southern Ry.*, 372 U.S. 658 (1963). Petitioners contend that the patent illegality of the tariffs brings this case within an exception to *Arrow Transportation Co. v. Southern Ry., supra*, at 671, n.22 and that the stay is necessary to protect them from irreparable in-

jury pending this Court's review of the merits.

We have reviewed the briefs and papers on file and have heard extensive oral argument by the parties and intervenors this date. Considering the circumstances by which this case comes to us, it appears to be *sui generis*. Petitioners have made a strong showing that this Court has jurisdiction to enter the stay. After balancing the equities under the traditional tests of *Virginia Petroleum Jobbers Assn v. F.P.C.*, 295 F.2d 921 (D.C. Cir. 1958), however, we are satisfied that the temporary stay heretofore granted should be and it is hereby dissolved.

Pending our determination of the merits of the petition for review, intervenor railroads are admonished to maintain such records as will be consistent with the accounting procedures established under 49 U.S.C. §15, par. (8) (c) to enable prompt determination of overcharges should the contentions of petitioners prevail upon review.

ICC - 37

Interstate Commerce Commission Order Allowing Respondents to Cancel Tariff Supplements Postponing Effective Date of Seasonal Grain Rate Increases.

Sept. 23, '77

ORDER

INTERSTATE COMMERCE COMMISSION

No. 36663

DEMAND SENSITIVE RATES ON GRAIN AND SOYBEANS – SOUTHERN FREIGHT ASSOCIATION TERRITORY

The Commission's order of September 15, 1977, reopened this proceeding and directed respondent rail carriers to defer the operation of the following schedules:

SOUTHERN FREIGHT ASSOCIATION, AGENT:

Supplement 23 of Tariff 972-F, I.C.C. S-1359
(Incentive Grain Tariff)
Supplement 201 to Tariff 988-A, I.C.C. S-909
(Southern Export Grain Tariff)
Supplement 137 to Tariff 908-B, I.C.C. S-999
(Southern Grain Tariff)
and any other related supplements.

These schedules set forth increased freight rates on barley, buckwheat, corn, corn screenings, grain sorghums, oats, rye, wheat, and soybeans and were the subject of the Commission's prior order of September 14, 1977, in this proceeding.

The Commission's order of September 15 was entered pursuant to the directive of the United States Court of Appeals For the Eighth Circuit in No. 77-1729, Seaboard Allied Milling Co. v. United States of America and Interstate Commerce Commission. Respondents have complied with the Commission's order by postponing the effective date of the involved

schedules, thereby temporarily deferring the increased rates and charges.

The Court of Appeals has dissolved its prior stay order following oral hearing and review of briefs. The court's action, by order dated September 22, 1977, includes the admonishment that intervenor railroads (respondents in No. 36663) maintain accounting records meeting the requirements of Section 15(8)(e) of the Interstate Commerce Act.

In accordance with the Commission's prior determination of September 14, 1977, in No. 36663, respondents shall be permitted to implement the proposal on one day's notice.

IT IS ORDERED:

1. That respondents may cancel on one day's notice those supplements postponing the effective date of the above-described schedules.

2. That, consistent with the court's admonishment, respondents keep account of all amounts received because of these increased rates and charges. The account shall specify by whom and on whose behalf the amounts are paid, shall otherwise meet all requirements of Section 15(8)(e) of the Interstate Commerce Act, and shall be maintained for the period the involved schedules remain in effect.

Decided September 23, 1977.

By the Commission, Acting Chairman Clapp.

H. G. HOMME, JR.
(SEAL) Acting Secretary.

CC8-68

Judgment-Opinion by the Honorable Judge Van Oosterhout

Feb. 16, '78

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 77-1729

Seaboard Allied Milling
Corp., et al.,

Petitioners,

v.

Interstate Commerce
Commission, et al.,

Respondents.

On Petitions for Review of Orders of
Interstate Commerce Commission.

No. 77-1770

Board of Trade of the City
of Chicago, et al.,

Petitioners,

v.

Interstate Commerce
Commission, et al.,

Respondents.

Submitted: January 13, 1978

Filed: February 16, 1978

Before GIBSON, Chief Judge, VAN OOSTERHOUT and MATTHES, Senior Circuit Judges.

VAN OOSTERHOUT, Senior Circuit Judge.

These are consolidated actions brought to set aside the Interstate Commerce Commission's orders in Docket 36663, Demand-Sensitive Rates in Grain and Soybeans - Southern Freight Association Territory (SFA). The Commission in its orders refused to suspend and to investigate the railroads' proposed tariff providing a 20% increase in rail rates applicable from September 15 through December 15, 1977, on 29 grain products shipped to and within SFA territory and to stations in SFA territory from limited points in Illinois and Indiana. The rate increase applied only to carriage in railroad owned cars, not to carriage in privately owned cars. The increase was sought pursuant to § 202(d) of the Railroad Revitalization and Regulatory Reform Act of 1976, Public Law 94-210, 49 U.S.C. § 15(17).[1]

---

[1]Such Act provides:

Within one year after February 5, 1976, the Commission shall establish, by rule, standards and expeditious procedures for the establishment of railroad rates based on seasonal, regional, or peak-period demand for rail services. Such standards and procedures shall be designed to (a) provide sufficient incentive to shippers to reduce peak-period shipments, through rescheduling and advance planning; (b) generate additional revenues for the railroads; and (c) improve (i) the utilization of the national supply of freight cars, (ii) the movement of goods by rail, (iii) levels of employment by railroads, and (iv) the financial stability of markets served by railroads. Following the establishment of such standards and procedures, the Commission shall prepare and submit to the Congress annual reports on the implementation of such rates, including recommendations with respect to the need, if any, for additional legislation to facilitate the establishment of such demand-sensitive rates.

The proposed tariff was published and filed with the Interstate Commerce Commission on August 18, 1977, by the SFA authorized agent for the interested railroads and was to become effective on September 15, 1977. Protests were filed with the Interstate Commerce Commission by some 35 separate entities or organizations representing major elements of the agricultural community including many large-scale poultry producers who used considerable quantities of transported grain. Most of them are plaintiffs or intervenors in these consolidated actions.

The issues here raised were raised before the Commission. The affected railroads responded to such protests. Included were the contentions that the Commission should suspend the tariff and investigate the charges that the tariff violated the long-and-short haul provisions of 49 U.S.C. § 4(1), that applying the increase only to railroad-owned cars was discriminatory, and that the increase did not serve the purpose of § 15(17) and the regulations promulgated thereunder, published in 49 C.F.R. §§ 1109.10 *et seq.*

On September 14, 1977, Division Two of the Commission, consisting of three members, filed a summary order reciting that 49 U.S.C. §§ 1, 2, 3, 4, and 15(c) violations had been charged but not established and denied petition for review of the tariff. On the same date the entire Commission in an order states:

> Several protestants also claim that the proposal would result in unauthorized departures from the long-and-short haul clause of Section Four of the Act. They offer rate examples purporting to demonstrate these departures. In rebuttal, respondent presents argument and tariff citations to disprove protestants' claims. In addition, respondent states

that it intends to avoid any potential Section Four violations and it commits itself to making tariff changes to remove any of these called to its attention. The evidence offered to support the alleged violations of Section Four of the Act does not warrant suspension of this proposal. However, respondents are admonished to take prompt action to remove violations of the long-and-short haul provision of Section 4(1) of the Act, if any, in connection with inter-territorial and intra-territorial movements that may be caused by application of demand-sensitive rates on whole grains between points in southern territory.

* * *

The section 2 and 3(1) issues are based on the applicability of the proposal, notably the exclusion of movements in private cars. The Commission has long recognized the justification for disparate treatment of private equipment. See, for example, *Switching at St. Louis and East St. Louis*, 120 I.C.C. 216, 221 (1926).

Other section 2 and 3(1) matters are the result of the possibly overbroad scope of the proposal. However, insufficient evidence is available to warrant suspension on the basis of such assertions. The adverse effects predicted by protestants and the benefits advanced by SFA are speculative. This is an experimental rate increase and there is no way to predict with certainty the overall impact of the proposal.

* * *

This is the first proposal filed pursuant to Ex Parte No. 324 regulations. The complaint sections of the Act protect, to a certain extent, the interests of those who may be adversely affected. Weighing the contentions before us and the clear Congressional purpose to permit experimental rate-making, we will permit this temporary adjustment to become effective.

It is ordered, that the respondent carriers file, with the Secretary of this Commission, reports relating the effect of the schedules in terms of (1) car utilization (filled and unfilled orders by car types); (2) grain movements based on specific commodities and the stations of origin and destination; (3) carloadings by car type and commodity; (4) evidence of diversion; and (5) evidence of shipper rescheduling. * * * This requirement is subject to later refinement or modification by the Commission. Since several protestants raise allegations concerning an alleged disparate treatment between railroad-owned and privately owned equipment, we will, out of caution, direct our Bureau of Investigations and Enforcement and Bureau of Operations to closely monitor this matter.

Seaboard Allied Milling Corporation, *et al.*, on petition to this court on September 14 obtained ex parte temporary stay of the Commission's orders refusing to suspend the operation of the tariff and permitting it to become effective. Another panel of this court, after a hearing on briefs and oral argument, set aside the stay order. A copy of such order not heretofore published is attached hereto as Appendix A.

Thereafter the Commission by order dated September 23, 1977, permitted the carriers to implement its proposed tariff on one day's notice. Such notice was given and the tariff was placed in effect. This court in its order of September 22 states petitioners made a strong showing that this court has jurisdiction to grant the stay but that upon a balancing of equities the temporary stay should be dis-

solved. The order however provides:

> Pending our determination of the merits of the petition for review, intervenor railroads are admonished to maintain such records as will be consistent with the accounting procedures established under 49 U.S.C. §15, par. (8)(e) to enable prompt determination of overcharges should the contentions of petitioners prevail upon review.

The Commission's order of September 23 contains substantially the same provision. Such directions were authorized by § 15(8)(e) and by general equitable principles. Such provisions at least strongly tend to indicate that uncertainty in the lawfulness of the proposed tariff exists.

Petitioners claim the Commission erred in not suspending the operation of the proposed tariff on the basis that it was patently in violation of statutory law. The United States, the Interstate Commerce Commission and the railroads all contend that the Commission has a large degree of discretion in suspension matters and that its action in refusing to suspend the operation of the tariff is not subject to judicial review. Respectful authority supports this contention. *United States v. SCRAP*, 412 U.S. 669, 698 (1973); *Arrow Transportation Co. v. Southern Railway Co.*, 372 U.S. 658, 667-68 (1963). In any event, the period covered by the seasonal tariff has long since expired and the resolution of the jurisdiction to review the suspension order has no significant impact on the result of this case. The protective orders of this court and the Commission protect the rights of the petitioners in event the court finds it has a right to review the Commission's refusal to continue the investigation of the validity of the proposed tariff and finds it to be unlawful.

The critical issue in this case is whether jurisdiction exists to review the propriety of the Commission's termination of its investigation of the lawfulness of the proposed tariff. The United States and the petitioners vigorously assert jurisdiction exists. They contend that the proposed seasonal rate violates the long-and-short haul rate differential set forth in 49 U.S.C. § 4(1). Such section prohibits common carriers from receiving any greater compensation for transportation for a shorter haul than for a long distance haul over the same line or route in the same direction, or to charge greater compensation as a through rate than the aggregate of the intermediate rates. The statute also provides that the carrier upon application and investigation by the Commission in special cases may be authorized by the Commission to charge less for longer than for shorter distances. No application under the foregoing provision has been made, investigated or considered by the Commission.

The Commission in its order above quoted acknowledges that the protestants have cited instances in support of their contention that the proposed tariff violates § 4(1). Protestants also urge that if more time were available additional violations could be found. Violation of the long-and-short haul provisions are denied by the railroads upon whom the burden rests to support the lawfulness of the tariff. The Commission in its order summarily holds that the evidence does not support § 4 violations to a sufficient extent to warrant suspension of the tariff and finds it unnecessary to further investigate the asserted violations. The Commission goes on to say: "However, respondents are admonished to take prompt action to remove violations of the long-and-short haul provision of Section 4(1) of the Act, if any. . . ." Reliance is also placed on the railroads' promise to avoid § 4 violations. This

may be difficult to do with the approved tariff requiring payment of charges in accordance with the tariff provisions approved by the Commission. As heretofore stated, we are not reviewing the Commission's discretion to suspend the tariff.

We accept the view of the United States and the protestants that the suspension powers and investigation powers are separate and distinct. The Commission has statutory authority to investigate the lawfulness of its tariffs. It is not contended that § 15(17) modifies or repeals the requirements of § 4(1). In any event, we hold that it does not.

The factors which prompted the Supreme Court in *Arrow Transportation Co. v. Southern Railway Co., supra,* to hold suspension orders not reviewable are not applicable to decisions of the Commission to refuse to make or to terminate an investigation of the lawfulness of a proposed tariff. The United States in support of its view at pp. 15 and 16 of its brief states:

> In contrast to the suspension power, Congress granted the Commission the power to investigate *proposed* rates because it viewed the power to investigate only *existing* rates as an inadequate remedy for the protection of shippers and the public. It authorized the Commission to order an investigation into proposed rates upon complaint by an interested party or upon its own initiative. *See* 49 U.S.C. 15 (8)(a). The Commission's authority to investigate proposed rates before their effective dates was consciously made coextensive with its prior-existing power to investigate existing rates which were the subject of section 13(1) complaints. [I Sharfman, *The Interstate Commerce Commission* at 58 (1931)]. The Congressional purpose underlying sections 13(1) and 15(8) is the same, insofar as both authorize the Commission to investigate and make orders with respect to the legality of rates, differing only as to when the Commission commences its investigation. For purposes of judicial review, it is unreasonable to assume that Congress intended the Commission's power to investigate proposed rates to be a matter committed to the sole discretion of the agency. See S.Rep. No. 355, [61st Cong., 2d Sess.], at pages 8-9.

We note that the Supreme Court has not passed on the reviewability of the issues before us. *Aberdeen & Rockfish R. Co. v. SCRAP,* 422 U.S. 289, 317-18 (1975).

A finding that the court has jurisdiction to review the Commission's determination not to pursue its investigation is consistent with finding that the review of a similar action by the Commission is available. *Alton Railroad Co. v. United States,* 287 U.S. 229, 236-37 (1932). Likewise, the Commission's decision to terminate investigation commenced pursuant to § 13a(1), involving the discontinuance of service by a carrier, has been held to be reviewable. *City of Chicago v. United States,* 396 U.S. 162 (1969). In footnote 5 of that case at p. 166 the court states:

> The Administrative Procedure Act, 5 U.S.C. § 551(6) (1964 ed., Supp.IV), defines "order" as including a "negative" form of "a final disposition" by agency action. And that kind of "order" is subject to judicial review. 5 U.S.C. §§ 551(13), 701 (b)(2), 702 (1964 ed., Supp.IV).

> When carriers file new rates, the Commission has authority on its own initiative or on complaint to make an investigation either with or without suspension of the new rates. 49 U.S.C. § 15(7). Where the Commission finds the proposed rates lawful, its order reads: "[T]he investigation proceedings [are] discontinued." See *Eastern Central Motor Carriers*

Assn. v. Baltimore & O.R. Co., 314 I.C.C. 5, 51. Such orders are reviewable. *Cooper-Jarrett, Inc. v. United States*, 226 F.Supp. 318, aff'd, 379 U.S. 6.

We recognize the right of review in rate cases is a narrow one. *See Atchison, Topeka & Santa Fe R. Co. v. Wichita Board of Trade*, 412 U.S. 800, 806-07 (1973) (plurality opinion); *North Dakota State Wheat Commission v. United States*, 565 F.2d 621 (8th Cir. 1977). The Commission's expertise in the field must be given considerable respect. The unlimited discretion would appear to have more weight in resolving economic issues. Significant policy reasons exist for review of the lawfulness of the proposed rate under the facts of this case. If the Commission's decision not to pursue an investigation of the factual background relevant to the legality issue is unreviewable, the protestants only resort would be to file a § 13(1) complaint once the rates became effective. The Commission has apparently limited its authority in such cases to the issue of whether the rate as applied is discriminatorily prejudicial or illegal. Moreover, in § 13(1) proceedings the burden is on the party challenging the lawfulness of the rate. In a § 15(8) proceeding the burden is on the railroad to establish the lawfulness and the reasonableness of the tariff.

It is the duty of the Commission in rate proceedings to investigate substantial issues relating to the lawfulness of the proposed tariff. While no formal hearing on the lawfulness issue was ordered by the Commission, the protestants' basis for declaring the tariff violated applicable statutes was clearly raised before the Commission. The Commission's order refusing to pursue the investigation reflects that it recognized and considered the protestants' claims. We believe that the Commission was derelict in its responsibility in refusing to pursue the investigation of the substantial charges of illegality which were made. Its order in effect made the proposed tariff operative and placed it in effect. Its order reflects no supporting findings or a reasonable basis for so doing, at least with respect to the charged § 4 (1) violations. Its order in effect is a final order on the § 4 (1) issue.

The Commission and the railroads urge that *Asphalt Roofing Manufacturers Association v. Interstate Commerce Commission*, ____ F.2d ____ (D.C. Cir. Oct. 17, 1977) Nos. 75-1641 *et al.*), supports their position that the Commission's termination of its investigation is not a reviewable order.

We agree with the statement in that opinion reading:

> The Supreme Court in *Aberdeen & Rockfish R.R. v. SCRAP*, 422 U.S. 289, 314-18 (1975) (SCRAP II) . . . expressly declined to resolve the issue whether an ICC "decision that a *general* rate increase is justified by reason of revenue need is a final decision ripe for immediate review. . . . absent exhaustion of § 13 remedies. . . ." 422 U.S. at 217-18 n.18 (emphasis by the Court). The Court in *(SCRAP II did, however*, hold that the Commission's conclusion at the close of a general revenue proceeding "that it need give no further *consideration* to environmental factors "under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-35 (1970), *in that proceeding*" was a final decision subject to judicial review, 422 U.S. at 318-19 (emphasis by the Court.)

Id. at ____ (slip op. at 11-12). We disagree with the conclusion that the Commission decisions not to pursue an in-

vestigation are under all circumstances not final decisions subject to judicial review and with the reasoning upon which such conclusion is based. *Id.* at ____ (slip op. at 12).

The substantial violations of specific statutory requirements here alleged, apart from the economic issues, are matters that should be fully investigated and decided with appropriate findings and conclusions. Failing so to do places the proposed tariffs in effect and is equivalent to a finding of lawfulness of the tariffs.

There is as great a justification for treating the Commission's order terminating the investigation as a final order subject to judicial review as there is for the holding in *Aberdeen & Rockfish R.Co. v. SCRAP, supra* at 318-19, that the Commission's determination in the general revenue proceeding to give no further consideration to environmental factors in that proceeding is a final order subject to judicial review. As stated by the Court: "[W]hatever consideration of environmental matters is necessary or proper at the general revenue proceeding is over and done with when that proceeding terminates." A similar reasoning should apply when substantial charges of patent illegality in the tariffs are made.

We believe that the purposes of judicial and administrative efficiency will be best served by permitting review of the termination by the Commission of its investigation. Such procedure would eliminate the necessity of consideration of numerous potential § 13(1) complaints by the Commission and the court. As above noted, the burden in a § 13(1) proceeding would be on the complainants to show that the tariff was unlawful and that they were adversely affected by it.

The Commission in its brief, at pp. 11 and 12, states: "While it may be true that patently illegal tariff proposals may be rejected, we strongly assert that this is not the posture in the present case." We believe a substantial issue of patent illegality has been presented. The validity of such complaint was not determined by an adequate investigation. We express no view on whether the proposed tariff violates the short-and-long haul provision of § 4(1) but do hold that charge has sufficient substance to require the Commission to investigate charges of such violation and to make appropriate findings and conclusions on the basis of such an investigation.

What has heretofore been said is sufficient in itself to require a vacation of the Commission's premature termination of its investigation of the § 4(1) charge and a remand of such issue to the Commission for an adequate investigation and findings based upon the investigation. A remand of such issue to the Commission for an adequate investigation and findings based thereon should be made.

We also have considerable doubt of the investigation with respect to the rate discrimination charges arising from the exemption of cars not owned by the railroads. Compensation for use of nonowned cars is prescribed by tariffs and the probability exists that the tariff compensation for the use of non-railroad cars has been paid. Thus a serious question arises whether illegal preference is given owners or lessees of privately owned cars to the detriment of shippers using railroad owned cars and whether by reason thereof producers and purchasers of grains shipped in railroad cars have been prejudiced by such an arrangement.

We hold that under the peculiar circumstances of this case charging patent illegality of the proposed tariff that

the Commission's determination not to adequately investigate the charges should be vacated. This case is remanded to the Commission with directions to investigate the charges of patent illegality and to make findings and determinations based upon such investigation.

The Commission is directed to promptly hold hearings to investigate the charges of patent illegality and to make detailed findings and conclusions with respect thereto.

If the Commission after investigation determines that the tariff is unlawful, it shall make appropriate provision for refund of increased charges collected under the tariff.

The Commission's order terminating its investigation of patent illegality charges is vacated and these cases are remanded to the Commission for further proceedings consistent with the views expressed in this opinion.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS,
EIGHTH CIRCUIT.

CC8 - 80

Court Order Denying
Interstate Commerce
Commission's Petition
for Rehearing
(CC8 - 73)

May 12, '78

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

September Term, 1977

Nos. 77-1729 and 77-1770

SEABOARD ALLIED MILLING CORP. et al., and BOARD OF TRADE OF THE CITY OF CHICAGO et al.,
Petitioners,

v.

INTERSTATE COMMERCE COMMISSION ET AL.,

Respondents,

and

SEABOARD COAST LINE RAILROAD COMPANY, ET AL.,

Intervenor-Respondents.

Petition for review of Order of
Interstate Commerce Commission

The Court having considered petition for rehearing en banc filed by counsel for respondent, Interstate Commerce Commission, and, being fully advised in the premises, it is ordered that the petition for rehearing en banc be, and it is hereby, denied.

Considering the petition for rehearing en banc as a petition for rehearing, it is ordered that the petition for rehearing also be, and it is hereby, denied.

May 12, 1978.

Orders of the Supreme Court of the United States Granting Petitions for Issuance of a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

Jan. 8, '79

SUPREME COURT OF THE UNITED STATES

No. 78-575

Southern Railway Company,

Petitioner,

v.

Seaboard Allied Milling Corp.,
et al.

Order Allowing Certiorari. Filed January 8, 1979

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit is granted. The case is consolidated with Nos. 78-597 and 78-604 and a total of one hour is allotted for oral argument.

Mr. Justice Powell took no part in the consideration or decision of this petition.

SUPREME COURT OF THE UNITED STATES

No. 78-597

Interstate Commerce Commission,

Petitioner,

v.

Seaboard Allied Milling Corp.,
et al.

Order Allowing Certiorari. Filed January 8, 1979

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit is granted. The case is consolidated with Nos. 78-575 and 78-604 and a total of one hour is allotted for oral argument.

Mr. Justice Powell took no part in the consideration or decision of this petition.

SUPREME COURT OF THE UNITED STATES

No. 78-604

Seaboard Coast Line Railroad
Company, et al.,

Petitioners,

v.

Seaboard Allied Milling Corp.,
et al.

Order Allowing Certiorari. Filed January 8, 1979

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit is granted. The case is consolidated with Nos. 78-575 and 78-597 and a total of one hour is allotted for oral argument.

Mr. Justice Powell took no part in the consideration or decision of this petition.